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MR. GIBBS.

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THE
PROCEEDINGS

ON THE
T R I A L

OF THE CAUSE

MACKELL v. HANSON, &c.

The Pleadings were opened by Mr BEST.

MR ERSKINE.

Gentlemen of the Jury,

THIS cause, which has been opened to you by my learned friend, Mr Best, will require all your attention. It has for its object the vindication of that which must be considered, by all reasonable men, to be the most important to every person, the enjoyment of reputation: and, gentlemen, the defamation complained of, is perhaps of infinitely more consequence than many other libels, which
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may be supposed more highly to affect reputation. I am no friend to libels of any description; but perhaps those that attack persons upon general subjects, and that are connected with their general characters, though frequently they are dictated by the most malevolent motives, are the most innoxious. Men depend, indeed, upon their reputations, but they depend upon their reputations by an appeal to the whole world concerning their general conduct; and therefore, when there is an invasion of a man's character, imputing to him that to which his whole life and conduct give the lie, it recoils upon the calumniator. But libels upon persons in trade, touching their conduct in it, are far more dangerous. Addressing myself to you, as merchants of the city, very few words, I apprehend, will be necessary to convince you, that it is absolutely incumbent upon every person, invaded in that respect, to come forward and vindicate his character; because men in trade can only live by their characters, as connected with trade; and if it be said of a trader, not generally, not loosely, but directly, and specifically, that he is engaged, throughout the whole course of his business, in fraud and imposition upon those who employ him, he must abandon his trade, or apply to the laws of his country.

It is not always in the coarsest libels that the greatest malevolence is to be traced. When a man
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in a heat of passion, without deliberation, perhaps smarting under the irritation of some provocation, writes that against his neighbour which is not true, he repents of it when the season of deliberation comes ; and, in these sort of libels, there is very little trouble given to the jury to investigate whether they are so or not. When a malicious person writes a libel, conscious that he is writing one, and knowing that it is probable it will be made the subject of judicial investigation, he writes it with more care, caution, and deliberation ; and I understand, that the worthy gentleman who is the defendant in this cause, had *his* libel settled with all the attention, as if it had been a plea to be put upon the record of a court. He paid his money, in order that every thing might be expunged which could subject him to punishment. He gave instructions for settling it :—“ Take care to keep me clear ; no “ matter what becomes of my adversary.” And therefore you will find, throughout this whole libel, that this gentleman is extremely tender of his own reputation, and makes that the stalking horse, in order to enable him to defame another with impunity.

Gentlemen, the circumstances of this case I will now relate to you : Mr Mackell, who is a smith in Park-Lane, and who has, for a great many years, had the honour of being employed by his Majesty, by a great number of persons of the highest distinc-

tion, and by many public boards, which are connected with the public works of this country, was employed by several noble and eminent persons, who had received permission from his Majesty to make openings into the Green-Park, for the decoration of their dwellings, which were opposite. Mr. Mackell was employed by Lord Salisbury, Lord Romney, and several others, to make their iron railing. It seems that a difference arose between these noblemen and Mr. Mackell, concerning the prices to be charged for the iron railing surrounding those improvements; and there is nothing more fit, certainly, than that persons who employ others, who are in trade, and conceive that they are charged beyond that which the ordinary course of dealing will warrant, should have the matter investigated; and therefore, the bill which Mr. Mackell delivered in, on account of his smith's work, was agreed to be referred to two persons, one on the part of Mr. Mackell, Mr. Brodie, an eminent smith; another on the part of the noble persons who had employed him, a Mr. Jackson: and it was agreed, that if they differed in their award, it should be referred ultimately to Mr. Wyatt, a gentleman of the greatest eminence in his profession.

Mr. Jackson and Mr. Brodie investigated this business, but disagreed in the sum that should be charged; and, in consequence of that difference,
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it went forward to Mr. Wyatt, as the umpire. Mr. Wyatt entered into the consideration of it with integrity and with skill; but it was alleged, that he had not heard all the evidence which could be offered on the part of these noble persons. It was suggested, that all the witnesses had not been examined, and that, therefore, Mr. Wyatt should review his award, and should take this matter farther into consideration, which was agreed upon. Gentlemen, Mr. Wyatt did reconsider the business that was originally referred to him, and he did make his final award; an award that, upon his oath, he can justify before you, and an award which was vindicated by the evidence given before him.

Gentlemen, I apprehend that an award is like a legal judgement, and that the justice of the case must be taken to be arrived at, after hearing all that can be said on both sides. I scarcely remember to have seen any cause, indeed no cause can exist, that is fairly controverted and litigated, in which there is not evidence opposed to evidence, and more especially when the matter is an object of skill, of judgement, and opinion; and therefore it is not at all wonderful, that when the noble lords on one side, and Mr. Mackell on the other, were contending what was the price to be paid for this iron railing that surrounded their houses, that there should be some who gave one opinion and some another; but it was left first of all to the

decision of these two persons, with an ultimate appeal to Mr. Wyatt, who was named the umpire, and who, having reviewed the award originally made between the parties, did finally, upon this evidence, make his report. There the business rested, and it could indeed proceed no farther.

It happened that, previous to this proceeding, Mr. Hanson, the defendant, who is a smith, and furnishing ironmonger, living in Bruton-Street, had had this bill of Mr. Mackell's referred to him for his opinion, previous to its coming in judgement before these arbitrators, and before this umpire; and I scarcely know a more delicate situation in which an honest man could be placed. Undoubtedly it is open to me, or to any other man who may have dealings with a tradesman presenting a demand which appears to be unreasonable, to hand it over to some person of whose skill I have an opinion; and undoubtedly it is open for that person, he being in a similar way of trade, to investigate it with integrity, and to give his judgement to the person who consults him; But I will take upon me to say, that it is of all other tasks that which a fair man the most dislikes to be employed in, and which he will undertake with reluctance; and when he comes to give a judgement founded upon his opinion, and a judgement which is unfavourable to the party who has made the charge, he will act with all possible tenderness.

I will put the case, that any man, who had had business in the law, had taken for his advocate any of my learned friends who now sit round me; that each person had, in his turn, conceived that justice had not been done to his case; and that he had lost his property for want of skill or attention in his counsel. If I were privately consulted, how far that charge was or was not ill founded, although I should be bound to deliver an opinion, it wou'd be an opinion of all others which I should give with the greatest reluctance and reserve. It would be a private opinion, an opinion that would be wrung from me by the force of truth; and if it ultimately should not be found a correct one, in the judgement of those who had jurisdiction, I should not think my character implicated in having delivered that opinion; but I should, on the contrary, be well satisfied, that a person of the same profession with myself had maintained his reputation. The same observation applies to persons in trade: and I maintain, that when Mr. Hanson was consulted, whether the bill was (as I shall prove to-day it was) a fair and honest demand, or the contrary, although he unquestionably had a right to give his opinion that there were overcharges, yet, when he had done so, he had discharged his office to those who consulted him,

Mr. Hanson's spirit, and Mr. Hanson's intentions, and Mr. Hanson's malevolence, will be exhibited to you by this which I hold in my hand : He was examined before the arbitrators,—he was examined before the umpire,—he had a right there, and he had a duty imposed upon him there, to deliver his opinion. I find no fault with him for that opinion ; and if he thought, as I take it for granted he did at that time, that the charges were more than ought to have been made by Mr. Mackell, it was for him to state what he knew, and to state it upon his oath, leaving to those who were to decide upon it to judge between the parties.

Gentlemen, no sooner had this award been made, than you find this Mr Hanson, the defendant, this brother tradesman, in the same line of trade, making an appeal to the public, touching a dispute originally subsisting between the noble persons whom I mentioned, and Mr Mackell, the plaintiff, which had been agitated, which had been discussed, and investigated, and which had been settled by a legal and by a final award. Why did Mr. Hanson make an appeal to the public? It seems his reputation was implicated in it ; his reputation, it seems, was implicated, because the demand of Mr. Mackell had been originally submitted to him privately for his opinion, in order to guide the noble persons, whether they should
continue

continue their resistance to it, and put it into a course of justice; and because he, in common with several other persons, had privately delivered an opinion encountered by the award, he is to make an appeal to the public. If that were the case in every cause tried at Guildhall, or in every private difference which subsists among merchants in the city; if, whenever a public judgement, or a private award, happened to go contrary to, or different from, the private judgement or opinion of any one man, convened as a witness before such court, or such arbitrators, there must be an appeal to the public, the world would be a scene of confusion and misrule. If there had been an attack, indeed, upon the integrity or the character of Mr. Hanson by Mr. Mackell, and he had appealed to the public after the award in his favour, and had complained that Mr. Hanson had been the author of the controversy, or had accused him of injustice or falsehood, there would have been some colour for his appeal. But you will see in what manner he conducted himself,

“ A short statement of facts, humbly submitted
 “ to the Most Noble the Marquis of Salisbury, and
 “ the Right Honourable Lord Romney, and other
 “ noblemen and gentlemen, concerning the iron
 “ fence railing parting their respective grounds in
 “ the Green-Park, by John Hanson, smith and
 “ furnishing ironmonger, Bruton-Street.” He be-
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gins the pamphlet, which he circulated with the greatest industry in every quarter of the town,—sent in with every bill, almost, that he delivered; if he sells you a grate, he sends this along with it; he procured it to be most industriously circulated through all the magazines and periodical publications of the week, the month, or the day, in order to undermine and destroy the character of Mr. Mackell, under pretence that he was vindicating his own. Gentlemen, either this pamphlet is written *bona fide*, or it is not. If it is *bona fide*, the man who wrote it must be supposed to be extremely delicate upon the subject of fame; he must be supposed to have felt, most pungently, any thing like an attack upon his reputation: he who has those feelings (and better feelings cannot be entertained) ought to recollect, that other men are equally interested in the preservation of their reputations; and of all the modes in which a malevolent and wicked man can scatter slander, that is the meanest and the most despicable which is done under the mask of defending a reputation which no man is attacking. Mr. Hanson begins thus:

“ In December, 1796, I received two letters,
 “ one from the Marquis of Salisbury, the other
 “ from Lord Romney, with Mr. Mackell’s bills in-
 “ closed, for smiths work done for their Lordships
 “ in the Green-Park, at the same time, desiring me
 “ to examine the bills, and to state what I should
 “ have

“ have charged for the same work. I must ob-
 “ serve, that before I received Mr. Mackell’s bills,
 “ Mr. Fisher, surveyor to Lord Vernon, supposing
 “ me to have done the work for Lord Salisbury,
 “ called on me, to know what I had charged for
 “ the same sort of iron work which had been done
 “ for Lord Vernon in the Green-Park, expressing
 “ his surprise at the charge made to Lord Vernon,
 “ and that he never could pass that bill.” One
 would have thought, that Mr. Hanson would have
 said, I had no great inclination to enter into a con-
 troversy of this sort,—it was an invidious thing,—
 that if there was a difference of opinion, it would
 be better to submit to some reference. But ob-
 serve with what an appetite this man swallows this
 controversy; and though he has so much business
 of his own, with what care, labour, and attention,
 he seems to investigate every part of it.

He goes on to say, “ I found that the railing in
 “ front, (thirty-seven feet three inches,) charged to
 “ Lord Salisbury by Mr. Mackell, at one pound
 “ eight shillings and sixpence per foot, including
 “ brick, stone, and paint, without the brick,
 “ stone, and paint, did not cost more than fourteen
 “ shillings and sixpence per foot, and that the
 “ slight side-fence railing, (forty-seven feet ten
 “ inches,) including brick, stone, and paint, Mr.
 “ Mackell charged his Lordship sixteen shillings
 “ and sixpence per foot, which, without the brick,
 “ stone,

“ stone, and paint, did not cost more than six
 “ shillings and fourpence per foot.” Mr. Hanson
 states, in another part, that Mr. Mackell had
 charged old iron for new, and had imposed that old
 iron upon his employers for new iron. He then
 goes on to the arbitration of Mr. Jackson and Mr.
 Brodie, and the umpirage of Mr. Wyatt; he states
 his own examination before Mr. Wyatt; and he
 labours to shew, that Mr. Wyatt had mis-con-
 ducted himself in his judicial enquiry, being re-
 solved to do that which was unjust in favour of Mr.
 Mackell. I will read the words from the pamph-
 let,

“ Thus the matter rested for some considerable
 “ time, Mr. Wyatt, without examining the two
 “ patterns of railing, that had been made upon
 “ oath for a comparison, without seeing Mr. Jack-
 “ son, or any of the persons on the part of the
 “ noblemen, which he was ready to produce,
 “ merely examining those on the part of Mr. Mac-
 “ kell, deducted about four per cent. from Mr.
 “ Mackell’s charges, and made his award.” So
 that you observe, this man, subsequent to the a-
 ward made by Mr. Wyatt, and the reconsideration
 and final judgement of Mr. Wyatt, tells the public,
 by way of vindication of his own character, that
 Mr. Mackell had charged a profit of from fifty to
 sixty per cent.; that he had given old iron for new;
 and that, when the noblemen who employed him
 were

were dissatisfied with his charges, it was referred to Mr. Wyatt, who did not examine any of the witnesses on the part of the noblemen, which he was ready to produce, but had made an unrighteous judgement, as unrighteous, indeed, a judgement must be, whatever it is, that proceeds upon hearing only one side of the question. In the conclusion of the pamphlet he thinks fit to say this: " Mr. Wyatt asked me if I had not seen Mr. Wapshott that day, and told him, if the award was not a just one the matter would be brought into a court. I answered, I did say, that as it respected Lord Romney, from the new matter of imposition that had been discovered before him upon the spot, I thought, sooner than his Lordship would submit, he would bring it into a court." In consequence of the imposition of Mr. Mackell, " He then said, I was an impertinent scoundrel; did I mean to say he would make an unjust award? if I did, he would kick me out of the room; and abused me exceedingly. It now appeared to me impossible to convince Mr Wyatt of the impropriety of Mr. Mackell's charges, notwithstanding the strong, positive, and, to my mind, unanswerable evidence that had been brought forward."

Gentlemen, when this pamphlet was, in this manner, industriously circulated throughout this great

great town, delivered almost to every person who could have occasion to employ persons in the way of trade, in which Mr. Mackell was engaged, it became necessary, for the vindication of his character, that it should be made the subject of investigation in a court of justice. An indictment was accordingly presented, and found against Mr. Han-son.

Lord Kenyon. Is this action brought upon the same publication?

Mr. Erskine. Certainly not.

Lord Kenyon. I rather believe, from my reading the declaration, that it is for the same pamphlet. If there is any doubt about the fact, I am sorry I interposed.

Mr. Erskine. It is not for the republication of this pamphlet, but it is for the publication of another pamphlet, containing charges and insinuations.

Lord Kenyon. That is one count; but I rather think I am grounded in my suspicion, that the first count applies to the very same pamphlet.

Mr. Erskine. No doubt it does.

Lord

Lord Kenyon. The first count is upon the first pamphlet, the second count is upon the second. It is not the usual course, in proceedings of this kind, to have an action brought after an indictment, by the prosecutor of that indictment.

Mr. Erskine. Gentlemen, I think that that which appears to his Lordship, in the present stage of the proceedings, (which cannot yet, in the nature of things, be understood, because the circumstances have not yet been disclosed,) is so far from operating as a bar to this action, or from being any thing like a mitigation, which is for you to consider, who are to deliver your judgement, it will be found to be matter of high aggravation. So far am I, who know the whole circumstances of the case, and whose office it is to disclose them to you, from being of opinion that Mr. Hanson can be defended, that I think the malevolence of the publication consists in his defence.

Gentlemen, when this indictment came for trial before my Lord and a special jury, at Westminster-Hall, there was a particular circumstance which may perhaps now have escaped his Lordship's recollection. When I had stated the case, his Lordship seemed very desirous, as they were respectable persons, that some end might be made of the contest; and undoubtedly the great object of that enquiry being, not the punishment of Mr. Hanson,

but the protection of Mr. Mackell, who was absolutely undone, if such conduct could with impunity have been possibly pursued, I readily consented to an indulgent proposition of the noble and learned judge; first, because it was my duty to do so, in deference to his Lordship's judgement; secondly, because I thought it the clear interest of my client to do so. I know very well, that in representing a person in Mr. Mackell's situation in a court of justice, for an advocate to be more strenuous in a prosecution, than the judge before whom it is tried, thinks it either for his interest, or for the interest of public justice that he should be, is a line of conduct likely to lead him into difficulties, from which he is not very speedily to emerge; and therefore, though I thought what I now think, that Mr. Hanson deserved very little consideration, although I thought his whole conduct most malignant and scandalous, yet I did assent immediately to the proposition which Lord Kenyon made, viz. that, without calling my witnesses, or hearing the judgement of the jury, who were to decide between the King, on the prosecution of this gentleman, and the defendant, that the defendant should be acquitted. Upon what grounds, upon what terms and conditions did I consent? It was, that my client's character might be restored, that it might no longer be published throughout the world, upon the authority of Mr. Hanson, that he had not only imposed upon these noblemen, who had employed

ployed him in the particular instance, but that the whole course and habit of his life was imposition. It was therefore agreed by his counsel, in public court, to make this apology, written by them, tendered to me, and to my learned friends who were with me in the cause. I will read it to you.

“ I published this pamphlet only in vindication
 “ of my own veracity and character; I had no intention to defame either Mr. Mackell or Mr.
 “ Wyatt; but, differing in opinion with them, as
 “ to the propriety of Mr. Mackell’s charges, I
 “ stated, in confirmation of my own opinion, the
 “ grounds upon which I had formed it; and if
 “ the publication contains any thing which can
 “ convey an opinion of Mr. Wyatt’s wilfully per-
 “ verting justice in his award, it is extremely
 “ wrong, contrary to my intention, and I am very
 “ sorry for it.”

When this apology was tendered to me in court, I believed no part of it. I could not possibly surrender my understanding, and the experience of my life, the moment that this blacksmith told me to do so. I cannot eradicate every thing that the common intelligence of human nature has taught me, because this man tells me to swallow what he offered me; but it was the interest of my client that he should accept it, because, if a man calumniates me, I allow him to put on any robe he

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chuses to cover himself, after he disclaims the purpose of exposing me. Why do I thus publicly, in the Court of King's Bench, use language so harsh concerning Mr. Hanson, the defendant, as to say, that I believed no part of this apology? I will vindicate myself; and let it be considered to be a calumny in me, and me to be a calumniator, as I charge him to be a calumniator, as I vindicate myself, from my instructions, for this declaration.

In the first place, in looking at the original pamphlet, for which he was indicted, I find it contained matter not at all necessary in the vindication of his own veracity and character; — I find his veracity and character by no means impeached; — I see no trace of any man's having invaded either of them; and I have observed no trace of the invasion of either of them; — I looked whether the pamphlet was written in that fair candid spirit in which a man vindicates himself, who does not mean to attack another; — and I trace, in every line and letter of it, a malignant caution, looking how he might safely plant a dagger into his adversary, without being known to be the hand that planted it. I observe, and you will observe also, when you take the books out with you, an attack of the most insidious nature, upon Mr. Wyatt, and a mean retraction of it in the hour of danger. He has the impudence to put in this apology, dictated by the most honourable men, and who, I am persuaded,

suaded, when they hear the rest of my opening, will not think that Mr. Hanson's character has derived any great lustre from his conduct; he says this, he asserts, that "If the publication contains any thing which can convey an opinion of Mr. Wyatt's wilfully perverting justice, in his award, it is extremely wrong, contrary to my intention, and I am very sorry for it." Had you no intention of invading the character of Mr. Wyatt, in the character of an arbitrator, when you charge him with having heard only one side, when you charge him with having only heard the evidence for Mr. Mackell, and not the evidence for the noblemen who were his opponents? Is it no attack upon the character of Mr. Wyatt to say, that it appeared impossible to convince Mr. Wyatt of the impropriety of Mr. Mackell's charges, notwithstanding the strong, positive, and unanswerable evidence that had been brought forward? And yet, though he thus labours in these parts of his pamphlet, to fasten this opprobrium upon Mr. Wyatt, he makes this apology to him, and says, he never had the smallest intention of offending him, or imputing any thing improper to him.

Gentlemen, thus ended the cause, The defendant was acquitted, in consequence of his having made the apology. Had we not a right to expect that this interference of the noble and learned judge should have put this subject at rest? Had we not a right to expect that when his Lordship had directed an

acquittal of Mr. Hanson, in consequence of his making an apology, as dictated by his own counsel, that he would have in future abided by it? Might I not ask his Lordship in this stage of the cause, who cannot from the record have the least conception at present of what it is that we are complaining of? Have I not had long experience enough of his Lordship, from the length of time since he came to preside in this court, to judge of what passed in his mind upon that occasion? I have no doubt that he wished a veil of oblivion should be cast over this subject; that Mr. Mackell, the tradesman who had done this work, and had had the matter settled by a final award, should continue in the possession of his character; that Mr. Hanson should go free from the indictment; and if his Lordship now conceives that after our consent to an acquittal, we were bringing an action upon the same pamphlet, after what fell from his Lordship, I should think I was engaged in a cause of a most monstrous complexion, contrary to every principle of good faith, and of law. I feel for myself that I could not open such a cause; and that so far from seeming to hang back from the disposition his Lordship had to interrupt me, I should have been finally silenced. But this is no such cause: the action is brought upon a publication subsequent to the acquittal under the indictment; a publication not one line or letter of which is the same with that upon which the party was indicted; but as he pretended originally, that he had

had written the *first* pamphlet because he conceived his character attacked, when no man was attacking it, so he conceives that his character is again attacked by having been indicted and acquitted, and by having given his voluntary apology; and he therefore prepares for the public a new attack upon the character of Mr. Mackell; and by way of vindication of his original publication, and in order to shew the public that it was not a libel, and that as it was not a libel, he was bound to write that which he had written, and for which he had been indicted, he justifies his former pamphlet in another elaborate one, reiterates the charges which were the subject of the first, vindicates and enforces them, enters fully into the evidence by which the first publication could be substantiated, makes drawings of all the works made by Mr. Mackell in an appendix to his book, enters into a minute investigation of what he ought to have charged for every article; maintains an imposition of old iron for new, maintains that which was enough to damn Mr. Mackell's character for ever, in the course of his trade, and then he makes the assertion upon which I mainly rely for your verdict this day; but before I go to it there is a part I wish first to read to you for explanation.

He ushers in this second publication with a preface, in which he says "Is it possible, my Lords,"—
(it is a letter to Lord Salisbury and others) "for a man,

“ feeling as I do, innocent of the offence imputed
 “ to me in the indictment, and proud that I was
 “ declared so by a special jury, to submit tamely to
 “ such a conclusion or inference, and not desire to
 “ do what every injured man has a right to do, ap-
 “ peal to an impartial public.” And he then goes
 on in the case to state, “ I admit that upon the
 “ opening,” (speaking of my opening to the jury)
 “ and upon his pointing out to his Lordship the two
 “ last lines of the book, Lord Kenyon said these
 “ words were certainly improper, his Lordship
 “ however observed that a civil action seemed to be
 “ the proper remedy to which the parties in this
 “ case ought to have had recourse, and not a crimi-
 “ nal prosecution, as in that case evidence might
 “ have been given on both sides; his Lordship at
 “ the same time observed, that he thought he per-
 “ ceived a disposition in the learned counsel to
 “ settle it.” Now attend to how he states the
 settlement.

“ At this moment a most surprising change took
 “ place in the sentiments of my prosecutors, or of
 “ their advisers, and they who had before refused
 “ all offers of accommodation were now content to
 “ accept a simple explanation of my motives for
 “ printing the statement of facts and a disavowal of
 “ any intention of imputing to Mr. Wyatt a wilful
 “ perversion of justice.” So that you observe he
 considers his own apology, under which alone he
 escaped

escaped from the prosecution, and had a verdict of acquittal by consent, as no apology at all; he considers that his adversaries were driven to accept it in consequence of having levied an unjust prosecution, and surprized that all of a sudden we should give up our cause and be contented to accept only his simple explanation of his motive; leaving him in possession of the truth of all that he asserted against Mr. Mackell. Gentlemen, if this were permitted, there would be an end of all accommodations, and I am persuaded his Lordship never could again repeat, notwithstanding the advantages that might be derived from it, any desire of accommodating differences in court, instead of ending as these accommodations ought to end, particularly when commencing from such authority—in friendship, in good neighbourhood, in oblivion of all animosity, this man, after an apology, publishes another book, reiterating the charges, and justifying the whole of his conduct, and this he does without giving up one point, which is the foundation of charge; on the contrary, he makes a still heavier charge, for he goes on and says, that to which I beg your attention, and which is the great cause of our complaints:

“ I meant no reflection upon Mr. Wyatt for allowing Mr. Mackell an apparent clear profit of “ between sixty and seventy per cent.” He means no harm to Mr. Wyatt—why, gentlemen, can a

man be such a fool as to think this is to be taken *bond fide*. Mr. Mingay is bye and bye to ask you to believe out of the mouth or under the pen of Mr. Hanson, that after he had written this book against Mr. Wyatt, for which he was indicted, that he considers himself as calumniated, by being supposed to be malevolent; and, in order to justify himself from the charge of malevolence, he tells you gravely " he means no reflection upon Mr. Wyatt
 " for allowing Mr. Mackell an apparent clear
 " profit of between sixty and seventy per cent. he
 " might think this quite right, and Mr. Mackell
 " might not be satisfied with less, he has undoubtedly a right to fix his own rates of profit; all I
 " wish to prove is, that I was founded in my objection to his charges, and warranted in the
 " prices which I had considered to be reasonable
 " by the general practice of the trade, and the rates
 " of profit usually allowed, and which I in common
 " with many others in the same line had been content to accept upon works of a similar nature."

The gentleman, who is my client, and who sits under me, feels himself in this situation. He says if between sixty and seventy per cent. is believed to be the profit which I charge, and less than which I am not contented to accept, and under which I will not work; if I am to be set forth to the public as a person dealing in that manner, how is it to be supposed that any person will employ me; and can it

it be seriously said, that this is not intended as a slander, because Mr. Mackell, like any other man, has a right to fix the price of his own labour. Every man has a right undoubtedly to say to the public, if you employ me I must have between sixty and seventy per cent. profit. But if it is believed by the public, by the circulation of this pamphlet in every corner of the kingdom, that Mr. Mackell is in fact a person of that description, and that he does not work for less than sixty or seventy per cent. and that such profit is not the ordinary profit, as it certainly cannot be, is not that infallibly calculated to prevent people dealing with him in the way of his trade,

The defendant has justified this; and if he proves his justification, he escapes from this action, I will not enter into the details in my opening, because it would be uninteresting to you; but my friend has undertaken, by his plea, to do this: he must establish that Mr. Mackell has charged and has received by the award of Mr. Wyatt between sixty and seventy per cent. profit upon his work, more profit of course than he, Mr. Hanson, and others in the trade, are contented to accept. If he makes out that to your satisfaction, he delivers himself from this action, and shews that Mr. Mackell is a man who ought not to be employed; that he is contending to establish profits which are exorbitant; and then Mr. Hanson is certainly justified in exposing

posing to the public a man who ought not to be trusted: but let him be aware that it is essential for him to make out that justification; because, if he fails in it, you will see the motive which impelled him from the beginning. We shall prove the case as it took place before Mr. Wyatt; and then my learned friend will go into his case, and must make out his justification in evidence before you.

Evidence for the Plaintiff.

Mr. WILLIAM HARRISON sworn.

Examined by Mr. LAW.

Q. You are, I believe, principal manager of the Land Revenue-Office?

A. I am an assistant to the Surveyor-General.

Q. Were you desired by any noblemen and gentlemen, who have houses in the Green-Park, to employ persons on the new railing there? Did you give any directions about the work?

A. No. If I may be allowed, I will state all I know of it. In consequence of the situation I hold in the Land Revenue-Office, I had a considerable share in the arrangements which were necessary for granting leases to different parties.—

Q. Be so good as answer the question, whether you gave any directions about the work, or what you know about any directions being given to these gentlemen?

A. I did

A. I did not give any directions.

Q. Be so good as produce the estimate of the prices originally given in by Mr. Mackell for doing the work?

A. I have no such estimate.

Q. Have you the award and other papers?

A. I have.

Q. I believe you know that after the work was done there was some dispute between Mr. Mackell and the noblemen and gentlemen for whom the work was done?

A. Yes.

Q. Was there, in consequence of that dispute, any reference to a smith, or to smiths, on each side?

A. There was.

Mr. Mingay. That reference was in writing?

Mr. Law. Be so good as to produce it?

Mr. Harrison. There are two papers of a similar tenor, one signed by Mr. Mackell, and the other by several noblemen and gentlemen for whom he had done this work. These are the original agreements of reference.

Mr. Gibbs. You must prove the hand-writing. Do you know the hand-writing of my Lord Malden?

A. Yes.

Mr. Mingay. I have certainly heard what my friend has opened. I have something to complain of; and I wish to God these gentlemen would neither of them publish any thing, or any body for them; but that this might, some how or other, be put

put an end to. I have, before me, that in writing which we have a right to complain of.

Mr. Erskine. What situation are we in? I look upon that as an *imprimatur* to a new pamphlet.

Mr. Law. Is that Lord Malden's hand-writing?

A. Yes.

Q. Do you know the Duke of St. Albans's hand-writing?

A. The Duke of St. Albans is blind; that was written by his Chaplain, by his desire, in my presence.

Q. Do you know Lord Carrington's hand-writing?

A. Yes. I saw Lord Carrington sign it. I saw the Duke of Bridgewater sign it.

Q. Did you see Lord Spencer sign this?

A. No. It was sent to his Lordship.

Q. Do you know his Lordship's hand-writing?

A. I have often seen letters of his Lordship's. I never saw him write.

Q. From what knowledge you have of his hand-writing, do you believe that to be his Lordship's hand-writing?

A. I do.

Q. Do you know Lord Romney's hand-writing?

A. Yes. That is Lord Romney's hand.

Q. Do you know Mr. William Morton Pitt's hand-writing?

A. Yes. That is his hand.

Q. Is this Mr. Mackell's signature?

A. Yes,

A. Yes, it is.

Mr. Mingay. It is referred to Mr. Brodie and Mr. Jackson.

Mr. Law. There was an award made by Mr. Wyatt?

A. This is Mr. Wyatt's first award.

Mr. Gibbs. Are you a witness to that award?

A. No.

Mr. Gibbs. There are subscribing witnesses to this award?

Mr. Law. I believe you received the second award?

A. I did.

Q. Did you communicate that to the noblemen and gentlemen whose names are subscribed?

A. I did communicate the purport of it.

Q. Where is the second award?

A. The second award was preceded by an agreement to refer, which is here. There are the signatures of Lord Malden and Mr. Mackell, both subscribed to it.

Mr. William Harrison

Cross-examined by Mr. Gibbs.

Q. You know this iron railing that was put up?

A. I have heard a great deal about it, but I know nothing of the iron work myself.

Q. Probably you know this,—that to all appearance this iron work, made by Mr. Mackell, is exactly

actly like that which was done for my Lord Carrington? You have seen them?

A. I have, and I should not be able to discover any difference.

Q. To all appearance they are the same, one as good as the other? Mr. Mackell's ranges in the same row; it is a continuation of Lord Carrington's, and was meant to correspond with it?

A. Certainly so.

Lord Kenyon. Was there any re-publication of the first pamphlet?

Mr. Gibbs. There was not.

Lord Kenyon. The jury will control my mistakes: but I cannot advise the jury to estimate damages, (supposing it should come to that extent) for the first pamphlet; nor can I advise them to take into consideration any thing which has been flippantly said of Mr. Wyatt.

Mr. Garrow. We are obliged to state the first pamphlet in order to introduce the second.

Mr. Gibbs. We have got this length; that the two railings ranged together, and that, apparently, they are exactly the same. Perhaps you may know that Mr. Slark, who has been paid by Lord Carrington, was content to receive the prices which Mr. Hanson estimated Mr. Mackell's work at?

A. I do accidentally know that circumstance, from Lord Carrington's having shewn me his bill.

Mr. Erskine. That will not do.

Mr.

Mr. Gibbs. I get from this witness, only, that to all appearances, the two railings are alike. If you have any knowledge of iron work, I would ask your judgement of Mr. Mackell's charge?

A. I have no judgement upon that subject.

Mr. Law. Do not you know that the man who made Lord Carrington's railing was turned off?

A. I never heard that he was; and I know there was no more work for him to do: so that whether he was approved of, or disapproved of, was immaterial, as there was no more work for him to do.

Q. Do you know that Mr. Mackell had to take down that very work because the iron gates would not shut?

A. No, I do not.

Mr. John Lawrence sworn.

Examined by Mr. Garrow.

Q. Look at this paper (Mr. Wyatt's first award). Did you see that signed by Mr. Wyatt?

A. I did.

John Tenpenny sworn.

Examined by Mr. Garrow.

Q. Look at this paper (the second award). Did you see Mr. Wyatt sign it?

A. I did.

John

John Tenpenny.

Cross examined by Mr. Gibbs.

Q. Whose servant are you?

A. Mr. Wyatt's.

Q. At what house have you lived lately?

A. At Mr. Wyatt's, in Queen-Ann-Street East.

Q. Has Mr. Wyatt been out of town?

A. Yes.

Q. When?

A. He was out of town last week.

Q. Have you been out of town last week?

A. No.

Q. Then what days has Mr. Wyatt been out of town?

(The witness hesitates.)

Lord Kenyon. Why don't you answer the question?

Mr. Erskine. Mr. Wyatt is here.

Mr. Mingay. We know that Mr. Wyatt is here.

Mr. Gibbs. What days was your master out of town?

A. He was out of town last Sunday.

Q. Has he not been out of town any day but last Sunday?

A. Yes, on Monday.

Q. That is he came to town on Monday morning.

(The witness again hesitates.)

Lord Kenyon. Why don't you answer the question?

A. I

A. I believe he did.

Mr. Gibbs. Have not you said within this week, that W^r. Wyatt was out of town at the time when he was in town,

A. Yes.

Q. You have said so when a man came to subpoena him; have not you?

A. Yes.

Q. How often have you denied Mr. Wyatt when they have come, on the part of Mr. Hanson, to subpoena him, How often have you denied that he was in town, when in fact he was in town?

A. Two or three times.

Q. Did Mr. Wyatt order you to do so?

A. Yes.

James Weatherall sworn,

Examined by Mr. Best.

Q. You are, I believe, clerk to the plaintiff?

A. Yes.

Q. Do you know of his being employed to do some work in the Green-Park?

A. Yes.

Mr. Gibbs, I wish to ask another question of Ten-penny.

D

John

John Tenpenny called in again.

Mr. Gibbs. There is a seal I see to this award?

A. Yes.

Q. Did you see Mr. Wyatt put his hand upon it, and say he delivered it as his act and deed?

A. Yes.

Mr. Gibbs. This is under seal, and it is not upon a deed stamp.

Mr. Erskine. We do not want this award at all.

Mr. Stothard sworn.

Examined by Mr. Best.

Q. Where did you get that pamphlet from?

A. Mr. Hanson gave it to me.

Q. Had you any conversation with him at the time?

A. He only desired me to read it if I had not seen it.

Q. Did he tell you at the time who was the author of it?

A. No. He asked me if I had seen it. I told him I had not. He gave it to me, and desired me to read it.

Mr. Best. We will read an extract from page 11.

Mr. Gibbs. That passage they mean to read, and which they have placed in their declaration, is as we think unintelligible without the rest.

Mr.

Mr. Best. I only mean to read this part of the pamphlet, merely for the purpose of proving the award.

Mr. Lawten read the title.

“ An appeal to the public, in vindication of the
 “ conduct of John Hanson, in regard to the prices
 “ charged by Mr. John Mackell, smith, and al-
 “ lowed by James Wyatt, Esq. architect, for the
 “ iron railing made by Mr. Mackell, for enclosing
 “ the gardens in the Green-Park, with a prefatory
 “ address to the Marquis of Salisbury, and the
 “ Right Honourable Lord Romney; to which are
 “ added, engravings of several illustrative draw-
 “ ings; the whole intended to correct certain mis-
 “ representations on that subject.”

Page 11. “ In a word, arbitrators were appoint-
 “ ed to examine and settle the bills, namely, Mr.
 “ Robert Jackson, smith, of Frith-Street, on the
 “ part of the noblemen and gentlemen, and
 “ Mr. Alexander Brodie, smith, of Carey-Street,
 “ on the part of Mr. Mackell; and, in case they
 “ should not agree, James Wyatt, Esq. architect,
 “ was appointed the umpire; the arbitrators not
 “ agreeing, Mr. Wyatt, in consequence, under-
 “ took the business, and made an award. This
 “ award was unsatisfactory, and was therefore,
 “ by desire of the noblemen, and, with Mr. Mac-
 “ kell’s consent, referred back to Mr. Wyatt, to

“ be reconsidered ; and Mr. Moser was appointed
 “ on the part of the noblemen, and Mr. Wapshott
 “ on the part of Mr. Mackell, to produce evi-
 “ dence before Mr. Wyatt. It was mutually a-
 “ greed that Mr. Wyatt's second award should be
 “ final, but it was upon this exprefs and most rea-
 “ sonable condition, *that all the evidence should be*
 “ *examined.*”

Mr. Erskine. Here is a declaration of two a-
 wards.

Mr. Mingay. My wish is, that every thing
 should end here to-day ; any future enquiry, before
 any other referree, or any where else, would be
 keeping this thing up : let it end, for God's sake.

Mr. Erskine. I will tell your Lordship what I
 propose, and I will state the objection that was
 made to our proposition, and I have no objection
 to leave it to your Lordship's determination ; for I
 have no interest in this case, but that both these
 parties may be at rest.

Lord Kenyon. I wish they might be at rest.

Mr. Erskine. The proposition I made was this ;
 as I thought the main object was, that we might
 not be here again upon similar objects, that some
 end should be put to this rage of publication, and
 that some restraint should be imposed which the
 parties could not break through, without conse-
 quences, which would be sufficient to prevent their
 breaking through them ; therefore I wish it may
 be considered as a *sine qua non*, that there should
 be

be some rule entered into to prevent all publications upon this subject, and that there may be an eternal oblivion concerning it.

Mr. Mingay. I agree to that.

Mr. Erskine. The next point is, upon what terms this, which is so absolutely fit to be done, and which is for the interest of both parties that it should be done, upon what terms it is to be accomplished? We are here contending in a court of justice, where the plaintiff contends the defendant is in fault, and the defendant contends he is not in fault. I wish that nothing should be decided to-day upon that subject.

Mr. Mingay. There we differ.

Mr. Erskine. I do not presume to say, that what I propose is the best thing that can be, but I mean to submit to your Lordship, after you have heard the proposition, whether it be or not the best; and if ultimately my friends do not think it the best, or will not leave it to your Lordship's decision, we necessarily go on again. As I do not by my proposition mean to put the defendant into the wrong, nor to put my client in the wrong, I wish to submit upon what terms the final settlement of all these differences shall be accomplished, so as to make peace, and, if possible, friendship between these parties; and that is a point I will leave to any gentleman at the bar.

Mr. Mingay. My proposition is, that we should withdraw a juror, and both parties enter into a

rule not to abuse one another any more ; not to publish any more.

Lord Kenyon. I cannot decide a question of this kind.

Mr. Mingay. Mr. Mackell, who has been employed by the Noble Lords, sitting on your Lordship's right hand, would submit to another reference, which must produce another quarrel.

Lord Kenyon. I wish the thing to be at an end ; neither side ought to be teased with publications.

Mr. Mingay. I have forborne mentioning the fact, but there have been other publications.

Lord Kenyon. If I were to interpose between the parties, I think that which goes to the immediate termination of all difference has some advantage on its side, rather than keeping in suspense differences which ought to be at an end immediately. I say no more.

Mr. Garrow. When we have taken the liberty to ask my Lord's opinion, and he has given it, we ought to acquiesce.

Mr. Gibbs. We will enter into a rule not to publish any thing.

Mr. Mingay. By all means let us go out of this iron age.

Mr. Garrow. Mr. Hanson must promise, (I do not mean that that should be made a rule of court,) that all the pamphlets which are within his reach he will collect, call in, and put into the fire ;—light up his forge with them some day.

Mr.

Mr. Mingay. Certainly.

Mr. Garrow. I do not mean to deprive any noble Lord of these valuable publications, who may have them in his library.

Mr. Mingay. We will enter into a rule to publish no more.

Mr. Erskine. I do not know that we are safe in advising our client to this; I see there is a disposition to continue the publication of them, and any man, let him be who he will, will be guilty of a libel in publishing them after this. I see we shall be just where we were.

Lord Kenyon. Then let the cause go on.

Mr. Garrow. Is the thing to be done *bona fide*?

Mr. Mingay. We undertake to destroy all that we have in our custody, power, possession, and controul, and you may insert any word that can be found in the dictionary to suit your purpose. What can we do more?

Lord Kenyon. I do not suppose that you need fear any future publications, with this record hanging over a man's head.

Mr. Mingay. Mr. Hanson says, all that he has in his own custody he is willing to destroy.

Lord Kenyon. I do not see how he can go farther.

Mr. Hanson. I will be advised by your Lordship in this business entirely.

Lord Kenyon. Take the rule to destroy all that are in his custody or power.

Mr. Garrow. Or in possession of his publisher. They must write to the publisher. Is he in court?

Mr. Hanson. I will put an end to it, if your Lordship pleases, by wishing that the cause may go on.

Mr. Mingay. Call Mr. Wright.

Mr. Erskine. I think it is an insidious proposition; I do not mean from you Mr. Mingay. Let the cause go on.

Lord Kenyon. There seems an admission of the two awards in the book.

James Wyatt, Esq. sworn.

Examined by Mr. Erskine.

Q. It is not necessary in this place, or any other in this kingdom, to ask you who you are, and what your situation is. Was this difference between Mr. Mackell, and the several noblemen and gentlemen who had employed him, upon the subject of this railing, which had before been referred to Mr. Brodie and Mr. Jackson, afterwards referred to you?

Mr. Gibbs. I object to that question, whatever reference there was to Mr. Wyatt is in writing.

Mr. Erskine. The award is admitted in the pamphlet.

Lord Kenyon. That there was an award.

Mr.

Mr. Gibbs. But the award, as stated in the declaration, is not proved. If there be an agreement in writing between me and another person, and an action is brought against me, it is not a proof of that agreement in writing, that I, by another writing, have admitted there was such an agreement, but the agreement itself must be produced.

Lord Kenyon. It is evidence of an agreement, if the substance of the agreement is set forth; to be sure it must be proved.

Mr. Gibbs. The award is stated in the second count in the declaration, and therefore the proof must follow that statement. I submit to your Lordship, that they cannot give in evidence this allegation, without producing the award itself, which must be proved by legal evidence; and that having been produced, it appears not to have the stamp which ought to be affixed to such an award.

Mr. Erskine. I conceive it is not necessary to produce the award itself, in order to prove that an award was made.

Lord Kenyon. If the whole of the allegation had been, that there was an award, without expressing the contents of the award, that would do; but where they state the contents of the award, I can only learn what the contents are from the award itself.

Mr. Law. In page 19, of the pamphlet, Mr. Hanson states the amount of the several bills, and says,

says, Mr. Wyatt, by his first award, deducted so much per cent. and then he says, by his second award, Mr. Wyatt deducted so much.

Lord Kenyon. That leads me to conjecture,—but I must have the award. That is, what the party collects of the contents of the award. If it had only been stated that Mr. Wyatt, as umpire, had made his award, it would have been sufficient.

Mr. Garrow. I conceive the whole foundation of my friend's objection fails *in toto*. The objection is, that this is a deed, and has not a deed stamp. I submit it is not a deed, but is an award, and has an award stamp.

Lord Kenyon. There was a case reserved in the Common Pleas upon that point, what the decision was I do not know.

Mr. Law. I believe the court have not yet come to a decision upon it.

Mr. Garrow. It is inferred that this is a deed. Upon looking at it, it appears to be no deed, but an award, and an award under hand and seal, and so it may well be, and it has an award stamp.

Lord Kenyon. The witness proved it was sealed and delivered.

Mr. Garrow. I know he proved that, and the attestation proves it sealed and delivered; but it may be sealed and delivered as a deed, or it may be sealed and delivered as an award: if the attestation does not state, that it was sealed and delivered as a deed, your Lordship will look at the instrument,

ment, and if the terms of it are equally applicable to an award under hand and seal, your Lordship will not call it a deed. It states this, "in witness whereof, I have hereunto set my hand," &c. and it is then signed by Mr. Wyatt. The attestation is, "sealed and delivered," not as the act and deed, but sealed and delivered,—I have a right, I submit, to interpose,—*as and for his award*, without enquiring what your Lordship's court, and the court of Common Pleas, will decide upon it.

Lord Kenyon. Suppose the submission to the arbitration had required, that the party should make his award under deed, by his hand and seal.

Mr. Gibbs. The young man swears it was delivered as his act and deed.

Lord Kenyon. The evidence of that young man is "sealed and delivered as his act and deed;" but I will not stop the cause upon that objection.

James Wyatt, Esq. sworn.

Mr. Erskine. This matter, which had been in controversy between the gentlemen who had employed Mr. Mackell, and which had been referred to Mr. Brodie and Mr. Jackson, was referred to you as umpire.

Mr. Wyatt. It was.

Q. After having examined it, I understand it was referred back again to you, for a revision of the subject?

A. It

A. It was.

Q. When it was referred back again to you, did you hear all the evidence that was offered to you upon the subject?

A. I did.

Q. Did you give the subject all due consideration, according to the best of your skill and judgment?

A. I believe I did.

Q. Did you examine the difference between the railing executed by Mr. Mackell, which was the subject of dispute, and other railing, which, it was contended by Mr. Hanson, might be done at a lower price?

A. I did.

Q. What was the price charged by Mr. Mackell for the railing he made?

A. Sevenpence a pound.

Q. That is the front railing?

A. Yes.

Q. How much would that be per foot?

A. About one pound three shillings.

Q. What was the price that Mr. Hanson contended this railing ought to have been done for?

A. Sixpence a pound.

Q. Did Mr. Hanson exhibit to you any railing which had been done for sixpence; contending, that that was the railing for which Mr. Mackell had charged sevenpence?

A. I

A. I do not recollect that he did, he shewed me drawings.

Q. Did you examine the railing which had been done by Mr. Mackell?

A. I did.

Q. Did you examine it with care and attention?

A. I did.

Q. In what manner did it appear to you to be executed?

A. Extremely well.

Q. I fancy it is unnecessary to ask you this question, Whether the price that is to be charged by a tradesman, for work of any sort, but particularly a work of that ornamental kind, does not, in some measure, depend upon the goodness of the materials, and the manner of its execution?

A. Certainly.

Q. Taking into your consideration the goodness of the materials, and the execution of this work, did it appear to you to be a reasonable charge?

A. It did.

Q. Have you had experience upon this particular subject?

A. Yes,

Q. Has it not been necessary for you, in surveying buildings, in making estimates, and in checking the accounts of persons who have been employed in these works, to know the nature of those works, and to estimate the value of them?

A. It has,

Q. Have

Q. Have you been in the course of allowing to other tradesmen, in the same department, the same prices when charged to other people for similar work?

A. I do not know that I had ever any work exactly similar; but there is other work, the price for which is fixed, and is as common as a halfpenny loaf for a halfpenny; and the witnesses I examined all agreed in one price upon one article?

Q. What article is that?

A. Common back stair-case railing.

Q. If I understand you right, then, all the workmen who were called before you, in the examination respecting the price and value of that back stair-case railing, agreed concerning the value charged by Mr. Mackell, that it was as a halfpenny roll for a halfpenny?

A. Yes, those very persons that were examined.

Q. Did Mr. Hanson differ with regard to the prices to be charged for such back stair-case railing?

A. He did not.

Q. Did Mr. Mackell and Mr. Hanson both agree in the price and value of that back stair-case railing?

A. Yes: and I say that this is worth more considerably; a penny a pound more is a very moderate charge.

Q. How much did the witnesses on both sides, and Mr. Mackell and Mr. Hanson, agree should be charged for back stair-case railing?

A. Sixpence.

A. Sixpence.

Q. Can you take it upon you to say, that that back stair-case railing, independent of the admission of both parties, is universally charged at sixpence per pound?

A. I believe it is: there may be very strong back stair-case railing, where the bars are perhaps an inch, or an inch and a quarter square, or an inch and three-quarters square, where they will make them at a less price, because there is no more labour, and a great deal more iron.

Q. They all agreed that sixpence a pound was a fair price for back stair-case railing in general?

A. Yes.

Lord Kenyon. I cannot take this evidence as establishing any of these facts.

Mr. Erskine. Do you take upon you to say, that back stair-case railing is usually charged at sixpence?

A. Yes.

Q. Then the question is, whether there is more workmanship in the railing which is the subject of dispute, than in that back stair-case railing?

A. A great deal.

Q. Is it possible for a smith to make this railing for the same expence that he can make the back stair-case railing, which is allowed to be charged at sixpence?

A. I do not think he can.

Q. Do

Q. Do you think the advance of a penny in the charge a reasonable advance?

A. I do indeed.

Q. Is it a very reasonable difference, if the workmanship and the materials happen to be, as you have described these to be, perfect in their kind?

A. It is so.

Q. I have understood you to say, that Mr. Mackell's materials were perfect, and the workmanship excellent?

A. Yes.

Q. Whether you conceive, from your examination of the work, and your knowledge of the subject, that Mr. Mackell had a clear profit of between sixty and seventy per cent.?

Mr. Gibbs. The witness's opinion, founded up, on the judgement of others, is not evidence against us.

Lord Kenyon. You must speak from your own knowledge, not from what you have acquired by examining other persons.

A. What I have stated, they were all of one opinion about.

Lord Kenyon. I must hear that from those witnesses.

Mr. Best. One of the allegations in the libel is that the witnesses were examined by Mr. Wyatt.

Lord Kenyon. I cannot establish one single fact by his conclusion from the evidence before him.

Mr. Erskine. Your Lordship observes, the libel is not, that my client had merely taken between sixty and seventy per cent. but that this is contrary to the general practice of the trade, and contrary to the rates allowed by others. I ask you, Mr. Wyatt, upon your own skill, upon your own judgement, and upon your own experience, whether the charges made by Mr. Mackell, are the usual charges made by the trade?

A. I think they are.

Q. You have already stated, that you consider the charges to be reasonable, and according to the general practice of the trade: From your own experience in this trade, and from your knowledge of the charges that have been made by workmen, have you any reason to believe that Mr. Mackell had a clear profit of between sixty and seventy per cent. upon this work?

A. No: I do not think he had of half that money.

Q. Do you know, in the course of your experience, whether it has been common with other persons, in the same line of business with Mr. Mackell, to charge only sixpence a pound for that work, for which he has charged sevenpence?

A. No, I do not.

Q. If it were common in the trade to make this sort of railing for sixpence, for which this gentleman has charged sevenpence, do you think you should be acquainted with it?

A. Certainly.

E

Q. Then

Q. Then I ask, whether it is common in the trade to make railing, with equally good materials, and equally good workmanship, for sixpence, as Mr. Mackell charges sevenpence for?

A. I do not think it is possible.

Q. Is it common?

A. I stated before, that I never had any done exactly of the same pattern, but I have had it made plainer, plain back stair-case railing, and I have had some much more ornamental, perhaps some not more ornamental, but I never had reason to complain of what I have had charged at sevenpence.

Q. Did you make this allowance from your own knowledge and experience, as well as from the result of the evidence laid before you, as a fair, usual, and reasonable charge?

A. I did so.

Q. Are you of the same opinion still?

A. I am upon my oath.

Mr. Gibbs. I object to that.

Mr. Erskine. Have you read *the Libel*?

Mr. Gibbs. I have read *the book*.

Mr. Erskine. Before the day is over we shall see which gives it the most appropriate description. Is the opinion, Mr. Wyatt, which you are now delivering to the jury, an opinion which you merely collected from the witnesses which came before you, or is it an opinion formed upon your own judgement?

A. I formed it upon my own judgement. I referred to the witnesses for the particular instances.

Q. Am I to understand you to say, that the opinion, which you are now delivering in court, is only founded upon the opinions of the witnesses you heard upon this subject, or is it the result of your own judgement and experience upon the subject?

A. The result of my own judgement and experience.

Lord Kenyon. What is the price of iron by the ton?

A. It varies at different times. I believe at the time this work was done it was about twenty-four shillings a hundred weight.

James Wyatt, Esq.

Cross examined by Mr. Mingay.

Q. Do you speak from your own knowledge as to the price?

A. No. It appeared so from the evidence.

Q. When this dispute arose between Mr. Mackell and the Noble Persons, who had employed him, it was referred to Mr. Brodie and Mr. Jackson?

A. It was so.

Q. They differed in opinion?

A. They did at last, but not at first.

Q. Did you attend, at any time, while they were investigating this case, before it was sent to you to inquire into?

A. I did attend at one of the meetings.

Q. How happened you to go there, when it was referred to these two persons?

A. I do not recollect, upon my honour.

Q. I believe you and Mr. Mackell are upon pretty intimate terms; you recommend him; but you have no acquaintance or connexion with Mr. Hanson, I believe?

A. No.

Q. But you had with Mr. Mackell, a good while before this affair.

A. I had.

Q. You attended once when Mr. Brodie and Mr. Jackson were hearing the evidence, in order to form their opinion?

A. I did.

Q. Afterwards you made your award—your *first* award. Then there was a meeting at Lord Malden's, the noblemen not being satisfied with the manner in which you had made your award?

A. That I know nothing about.

Q. I ask you, upon your solemn oath, whether at the time when you made your first award, upon bills to the amount of two thousand six hundred pounds, from which you deducted twenty-six pounds, you had gone to the spot, and looked at the work, upon which you made your award, or examined any witnesses, and how many?

A. I

A. I had. I went to the spot. I went to the meeting of Mr. Jackson and Mr. Brodie. Mr. Jackson himself said——

Q. What Mr. Jackson said you must not state. I ask you, whether you went to the spot, and examined the railing. Did you have any of it taken up to examine the work, to be able to form a judgement of your own?

A. No. I should not have formed any better judgement of it, had it been taken up.

Q. You had not any of the railing taken up?

A. I did not take any of it up. I did not think it necessary.

Q. Is the railing of my Lord Carrington's made of different materials from this?

A. I do not know that it is of different materials; it is all iron.

Q. Do you know whether Lord Carrington's railing ranges with this?

A. It does.

Q. Do you know at what rate Lord Carrington was charged by a very honest man?

A. I know by what came out upon the evidence, not otherwise, that Lord Carrington was charged sixpence a pound.

Mr. Mingay. You must not state what others told you, I shall call those persons. Out of this sum of two thousand six hundred pounds, how much per cent. profit did you allow Mr. Mackell?

A. I did not allow any particular per centage,

because I did not know the prime cost. You are speaking of the first award.

Q. I am. Can you give my lord and the jury any hint of how much per cent. profit, in hard money, you allowed to be put into Mr. Mackell's pocket upon this job?

A. It is impossible I can tell.

Q. I will put this question to you as a man of skill. Do you not think that those persons, who took the prime-cost of the iron, what it could be wrought up for, and the cost for the stone work, and every item of which the whole was composed, would have as good a means of forming a judgement of how much per cent. the profit was?

A. Certainly.

Q. Whether the proper way to come at the clear profit is not to reckon every farthing of expence that a man could, by fair possibility, be out of pocket?

A. Certainly.

Q. Can you give us a hint of how much per cent. profit you allowed Mr. Mackell upon your whole award?

A. I think about twenty-five per cent.

Q. Will you swear it was not forty-five?

A. *I cannot.*

Q. Will you swear, upon your solemn oath, that it was not sixty per cent. profit that you allowed Mr. Mackell for this job that was done in the Park?

A. I

A. I will not swear that, but I do not believe it was more than twenty-five.

Q. You think it was twenty-five?

A. It might be there or thereabouts.

Q. But I should think, from the account you have given us, you cannot tell very correctly what the profit was?

A. *Afterwards I could.* It was afterwards proved *from what they said.*

Q. Did you know at all, that any gentleman had the honour of calling at your house, within these few days, to have subpœned you?—A. Yes.

Q. Did you not know, upon your oath, that Mr. Hanson's solicitor, his clerk, and several persons had called at your house, over and over and over again, in order to subpœna you to bring certain papers which we cannot get?

A. No; I did not till I received a letter from Mr. Dawson.

Q. Did not you know that you were to be subpœnaed, and did not you order your servant to deny you?

A. Yes, I ordered my servant to deny me, supposing the defendant's solicitor wished to subpœna me, and I will give you my reason. I was engaged to go down to Lord Carrington's, at Wycomb, on Thursday morning; there came this person, he had been two or three times in the afternoon of Wednesday, he left the name of Harper, and said he would call the next morning. I told my servant to

ask his address, and I would either call upon him or send the next morning. That evening he sent a boy; the boy was asked where Mr. Harper lived, and was told I would either send to him or call upon him: the boy made answer, it was of no consequence, Mr. Harper was never at home; upon which I guessed they meant to subpoena me. As I was engaged to go down to Lord Carrington's the next morning, I wished to avoid it. I thought it might hinder my going down to Lord Carrington's.

Q. Had you not at that moment a subpoena from Mr. Mackell, and meant to attend?

A. No, I had not.

Q. Did not you undertake to attend for Mr. Mackell?

A. I undoubtedly should not have come, if I had not been subpoenaed.

Q. When was you subpoenaed by Mr. Mackell?

A. I think it was on Thursday.

Q. Was it before or after the time you had had these applications?

A. It was after the time.

Q. Now, upon your oath, at one of the times, when the effort was made, on the part of my client to subpoena you, was not Mr. Mackell with you?

A. Upon my oath I do not know whether he was or not.

Q. What? do not you know whether Mr. Mackell was there? It is only within these two days. At the time the gentleman came to your house,

house, with intent to subpœna you, was not Mr. Mackell with you, upon your oath?

A. I do not know that he was.

Q. Will you swear he was not?

A. *I will not.*

Q. Do not you believe that Mr. Mackell was at that moment present in your house? Why, I have a person here who saw him go into your house, therefore you had better acknowledge it at once. At the time you suspected you should be subpœnaed, and was therefore denied, was not Mr. Mackell with you?

A. I do not recollect that he was.

Q. Will you swear that he was not?—A. *No.*

Q. Did not Mr. Mackell know from you, before you came into court this day, that you had avoided being subpœnaed by the opposite party?

A. *Yes, he did.*

Q. Mr. Mackell knew you had done the *handsome honest* part by him to keep out of the way, to avoid being subpœnaed by the other party?

A. I received Mr. Dawson's letter, and told him I had not a single paper belonging to the business in my possession; that I had given them all up to Mr. Mackell, or his solicitor, a twelve month ago.

James Wyatt, Esq.

Re-examined by Mr. Erskine.

Q. Have you any one document, any instrument, or paper in your possession, that you could produce in evidence in this cause?

A. *I*

A. I have not.

Q. Is it true, as you have now asserted, that you have delivered them up a twelve-month ago.

A. Yes, upon my oath?

Q. Did you deny yourself, or take any other step, in order to prevent the defendant having the opportunity of putting the questions to you, that have been put by his counsel this day?

A. No. I wrote to Mr. Dawson, that I was ready to receive his subpoena.

Q. Had you any other reason to avoid being served with his subpoena than its not suiting your own convenience?

A. No other.

Q. Is it usual to take that which is the common charge in the trade as the criteria when you are examining the price of articles, or to look at the person's books, to see the price of the materials, and so to estimate the profit per cent. which he ought to have?

A. I take the common charge.

Q. If you see the materials are of a particular quality, and the workmanship of a particular quality, you estimate what it is worth, according to the usual charges in the trade?

A. Most undoubtedly.

Q. Did you proceed in that way in examining Mr. Maekell's charges?

A. I did.

Q. Then

Q. Then, upon your oath, according to your judgement, are they more than the common charges?

A. I am pretty positive they are not.

Lord Kenyon. Before the umpirage devolved upon you, there had been meetings between Mr. Jackson and Mr. Brodie?

A. Yes.

Lord Kenyon. You attended at one of those meetings?

A. I did at the first.

Lord Kenyon. Did you thereby attain a sufficient insight into the question that you were to discuss?

A. No. I attended them but for a little time.

Lord Kenyon. Then the umpirage devolved upon you. Before you undertook to decide, did you obtain all the information you could, and did you exercise your own judgement on that information?

A. I did. In the first instance, when I met Mr. Brodie and Mr. Jackson, Mr. Jackson said they had been to examine the railings in the Park, and they had examined the bills, and believed there would be no occasion to trouble me at all. I recommended to them, that if they differed upon any one point alone, that they would refer that point to me, and abide by my determination upon that point.

Lord Kenyon. But it did come to you finally?

A. It

A. It did. I wrote to Mr. Jackson, desiring them to send me all the papers and matters relative to that reference, which were in his hand. He sent them me by his partner, and he was going to deliver me some account of the business—

Lord Kenyon. I want that explained which it seems to me essential for yourself that you should explain. Before you made an award, had you used due means to obtain information to arrive at the conclusion at which you arrived?

A. I did. In the first instance I went to view the work in the Park—

Lord Kenyon. You made two awards. Between these two awards there was a wide difference. I want to have that explained. If you did use diligence before you made your first award, how came there to be so considerable an abatement in your second award?

A. At the conclusion of the examination of all the witnesses, Mr. Moser, who was appointed by the noblemen and gentlemen to produce the witnesses on their part, said, he thought the difference between them might still be compromised, and he proposed a certain per centage to be allowed to Mr. Mackell, upon the evidence of Mr. Mackell's clerk; upon his producing evidence of Mr. Mackell's prime cost, he would allow him, he said, so much per cent. I acquiesced in that, and we were to have a meeting the next night at his house. Mr. Mackell's clerk attended with the amount of his prime cost; and when we began to make a calculation

ulation upon that prime cost, Mr. Moser found it amounted to so much more than he expected, that he went out of the room, and said he would not agree to it.

Lord Kenyon. I see that from Lord Romney's bill there is above ten per cent. deducted upon the second award, more than upon the first award?

Mr. Mingay. I beg your Lordship will ask whether Mr. Wyatt examined a single witness before he made his first award?

Lord Kenyon. I have asked that. He says he took all due means to ascertain it before he made his first award; and to be sure it was essential to his character he should do so. When it devolved upon you to decide between these parties, did you use all due diligence to obtain information before you made that decision?

A. I did. I examined the work.

Q. That you did before the first award?

A. Yes.

Q. Then why did you, in your review of the article of Lord Romney's bill, deduct considerably more than ten per cent?

A. There was an assertion made with respect to the stone work; and that Mr. Mackell had not deducted for iron, and therefore there was a deduction made. I endeavoured, by admitting what Mr. Hanson had asserted, that Lord Romney's objection should be removed, by deducting from his bill the very objectionable parts, which
Mr.

Mr. Hanson had stated, but I was not in my own mind convinced that my first award was at all wrong.

Lord Kenyon. Is the allowance made to surveyors, a per centage, or so much per day?

A. A per centage.

Lord Kenyon. It really eludes my apprehension, how it is possible to know what profit is to be allowed, and what charge ought to be made, unless I know the prime cost of the articles used.

A. Only by what other people charge

Samuel Cockerell, Esq. sworn.

Examined by Mr. Law.

Q. I believe you saw this iron railing, in the Green-Park, before these noblemen and gentlemen's houses?—A. Yes.

Q. Did you form any estimate of what was a proper charge for the iron work, taken by itself?

A. My judgement of it was by a comparison between that and other smith's work that had been made under my direction, which was exactly similar.

Lord Kenyon. What are you?

A. A surveyor.

Mr. Erskine. And a very eminent one indeed.

Mr. Law. Forming your estimate of what was a fair charge, according to the charge usually made, what did you allow for the iron work?

A. There

A. There were several gentlemen that were examining it at the same time; for the front railing I think seven-pence a pound.

Q. How much per foot would that be?

A. From some memorandums I made of what was the charge, which I have in my pocket, the whole charge was twenty-eight shillings and six-pence per foot, including several other items for painting, &c.

Q. Did that include stone and brick work?

A. I think, from the memorandum I have here, the iron work amounted to twenty-five shillings, the stone to sixteen-pence, the brick to six-pence, the painting to thirteen-pence. There was a loss stated upon alterations, which was computed at seven-pence; that was the way in which the charge of twenty-eight shillings and six-pence was made out.

Q. Did you see the manner in which this work was done?—A. Yes.

Q. Was it done in as workmanly and perfect a manner as a work of that sort could be done?

A. I think it was.

Q. Were the materials good of which the work was formed?

A. As far as I could judge of it, it was: it appeared to me to be so.

Q. You are in the habit of estimating the charges for work of various descriptions, and this among the rest?

A. I

A. I am.

Q. Were Mr. Holland, Mr. Hardwicke, Mr. Brettingham, and Mr. Lewis, there?

A. I do not recollect Mr. Brettingham. My memorandum is, that it was upon the 26th of April, 1797. Mr. Wyatt, Mr. Holland, and Mr. Lewis, was present, but I do not recollect Mr. Brettingham being at that meeting.

Q. Did you make a second survey?

A. I do not recollect that I did.

Q. Had you any occasion to vary from the opinion you had formed as to the propriety of the charges you have just been stating?

A. None at all.

Q. And these are charges conformable to the usual charges in the trade, and the allowances made by you when you have occasion to survey.

A. They were, or in proportion to them. Wherever there is a variation in the work, there must be some variation in the prices.

Mr. Cockerill.

Cross-examined by Mr. Gibbs.

Q. I understand, that in estimating what Mr. Mackell ought to have for his work, you did not consider what the prime cost of the materials and the workmanship was, or what profit he ought to have, but what other people, whom you knew, had charged for similar work.—A. Yes.

Q. You

Q. You were taking the price per foot?

A. Yes.

Q. I observe you state the price of the stone, brick, &c. to be about three shillings and six-pence?

A. Yes.

Q. Was Mr. Rawlinson, Mr. Fortune, Mr. Messenger, or Mr. Morris, present when you made that estimate. I will tell you why I ask; because they have all stated it to be three shillings and twopence, and they were employed by Mr. Mackell himself. Will you take upon you to say, that the fair charge for that which is not iron work is more than three shillings and twopence?

A. I do not take upon me to say that the fair charge is three shillings and sixpence, or three shillings and twopence; it was taken from admeasurements, made by other persons: we did not examine as to that admeasurement, but the price at which it was computed; and I am now speaking from memory of what passed two years ago.

Q. Referring to memorandums?

A. They are only memorandums in general.

Q. How came you to be called in?

A. I believe at the request of Mr. Wyatt.

Q. Why, you have no doubt that Mr. Wyatt desired you to come?

A. Yes; upon looking at my memorandum I observe that I attended upon the request of Mr. Wyatt.

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Q. It

Q. It was after the award, was it not, that you met?

A. I do not know whether it was before or after the award; it was upon the 26th of April, 1797.

Q. As you are a surveyor, and used to these things, you say the full charge for this iron work, and brick, and stone, &c. is one pound eight shillings and sixpence?—A. Yes.

Q. And you leave one pound five per foot for the iron work, according to the estimate that you have made?

A. These are the particulars from which I understand the charge was made out.

Q. But I am speaking to you now as a surveyor, who have exercised your own judgement upon the thing. You say, that in your opinion, comparing this with the other charges, though you never knew any other work exactly like this, you think one pound five shillings is a fair charge?

A. Yes.

Q. Computed as other people compute, is it a reasonable charge?

A. Yes, at sevenpence a pound.

Q. Judging from the means that you had of judging, if any man was to charge only twenty shillings per foot for work of this sort, he must soon be in the Gazette, he could not live by it?

A. I should think that he charged very reasonably if he charged twenty-five shillings for it.

Q. And that if a man charged only twenty shillings he must be ruined?

A. I do not say that.

Lord Kenyon. I thought I was to learn from you what was a fair charge?

A. I think sevenpence a pound is a fair charge.

Mr. Gibbs. And you think if twenty-five shillings a foot is a fair price, then twenty shillings per foot must be a losing price of course?

A. I do not know exactly what smiths profits are.

Q. You have surveyed a great deal of work; I know you are a man of experience. Do you find it a common vice of the people, whose bills you survey, to charge in such a way as to lose by their work. Were you ever examined in the presence of the other arbitrators, or of any of our witnesses, by Mr. Wyatt?

A. Mr. Wyatt never examined me?

Q. You went merely at Mr. Wyatt's request?

A. Yes; I understood as a professional man.

Q. Do you know whether any notice was given to the gentlemen on the other side, when you attended?

A. I do not know, indeed; I believe I met twice, but I am not sure.

Q. You know that this railing, which you went so accurately to examine, ranged with the railing before Lord Carrington's house?—A. Yes.

Q. I take for granted, that those who sent you to examine this railing, desired you likewise to examine Lord Carrington's railing, to see whether that was the same sort?

A. I did not see any part of it but the upper end of the work; I understood that the whole was alike?

Q. You understood that Lord Carrington's was the same as the rest?

A. There was no distinction made.

Q. Then you, who went by Mr. Wyatt's desire to examine this work of Mr. Mackell's, was not desired to examine the railing which was in the front of Lord Carrington's house?

A. Certainly not.

Q. Did you look at it?

A. I do not recollect that I took any particular notice; taking for granted that the parts I looked at were similar to all the rest. I did not go through from one end to the other.

Mr. Gibbs. I will let you into a secret, that Lord Carrington's railing was charged at less than twenty shillings per foot.

Mr. Mingay. I will prove that it did not cost the man who made it fourteen shillings and sixpence per foot, and he was very thankful for the job.

Mr. Gibbs. Do you know any thing of those gates mentioned in this book, for which estimates were sent, one by Mr. Hanson, and another by Mr. Mackell, where Mr. Mackell's estimate was three hundred and fifty-six pounds, and Mr. Hanson's

two hundred forty-two pounds eighteen shillings. Do you know any thing of those gates mentioned in this book?

A. Am I to speak of my own knowledge, or from hearsay.

Q. Of your own knowledge?

A. Then I know nothing of them.

Mr. Cockerell.

Re-examined by Mr. Law.

Q. Is the charge upon back stair-case railing a less price, and how much less, than upon the sort of work in question?

A. There is a great deal more in this than in ordinary back stair-case railing.

Q. Do you think it is worth a penny a pound more?

A. Certainly.

Lord Kenyon. You survey for gentlemen?

A. Yes.

Lord Kenyon. And you settle the rates which they are to pay their workmen?—A. Yes.

Lord Kenyon. Your report, therefore, to your employers guides their conduct?

A. Always.

Lord Kenyon. I suppose it is your duty, to reduce the prices, as far as reasonably you can, making a proper allowance to the workmen employed?—A. Always.

Lord Kenyon. Mr. Wyatt acts in the same character, I suppose?

A. I take it for granted, wherever there is any excess of charge to reduce it to a fair standard.

Lord Kenyon. You are paid a per centage upon that which you allow?—A. Yes,

Lord Kenyon. How happens it that you and Mr. Wyatt differ so materially in the prices to be paid for this. Mr. Wyatt says one pound three shillings is a proper charge, and you say one pound five?

A. I speak from recollection; I think it was one pound five.

Lord Kenyon. Mr. Wyatt speaks from great experience, he said, the rate he would allow was one pound three per foot, you say one pound five.

A. When I speak of one pound five, I understand the weight to have been about forty pound a foot?

Lord Kenyon. But you do not pull it to pieces in order to weigh it; you look at it.

A. Never without enquiring what the weight is per foot,

Lord Kenyon. I have always considered surveyors to be a very mysterious people. I have taken this railing at sevenpence a pound, that would be, by the foot, one pound three. That is what Mr. Wyatt stated.

Mr. Erskine. As your Lordship observes, sevenpence a pound is that which regulates; by the foot is another

ther medium of calculation ; there can be no difference, because it all turns upon the weight.

Lord Kenyon. I think that is absolutely impossible ; because, if the conclusion is to be arrived at, by weighing, in every survey these great surveyors make, they must first pull to pieces all the work, in order to see what it is worth.

Mr. Gibbs. We have done so ; we have pulled it up and weighed it.

Mr. Hardwicke sworn.

Examined by Mr. Garrow.

Q. How long have you been a surveyor ?

A. Twenty years.

Q. Have you, in the course of that profession, been called upon to value smith's work, railing of various sorts ?

A. I have,

Q. Have you examined that at the Green-Park, which forms the subject of this day's enquiry ?

A. I have seen it and examined it.

Q. Are you acquainted with the charge Mr. Mackell made to the noblemen who employed him for that work ?

A. I am.

Q. You know what sum was allowed by Mr. Wyatt ?

A. I think it was sevenpence per pound for the front railing, which I saw in the Park.

Q. Is that, in your judgement, forming that judgement from your experience in other cases, a fair reasonable allowance to tradesmen, or an imposition upon the employer?

A. I think a fair reasonable allowance, comparing it with what I have allowed in other cases.

Q. Have you, in those other cases, acted according to the best of your skill and integrity?

A. Surely.

Q. Do you think that that allowance gives to the tradesmen, who had executed the work, a profit of sixty per cent.?

A. I do not think it gives him so much.

Q. You would think that that was an excessive profit?

A. I should think it was an excessive profit?

Q. Do you think this affords a fair and reasonable profit?

A. As near as I can judge.

Q. Are you acquainted with the article which is called back stairs railing?

A. I have seen a great deal of it, and have passed many bills for it.

Q. What is that usually charged per pound?

A. Sixpence a pound.

Q. Is it universally charged at sixpence?

A. I believe it is very generally so; it is as far as has come to my knowledge.

Q. Do you think that a fair allowance?

A. It is, if the work is well done.

Q. Do

Q. Do you think a penny more; for this more ornamental work, a reasonable addition?

A. I think it is: the work was extremely well done, there had been a great deal of pains taken with it.

Mr. Hardwicke.

Crofs examined by Marryat.

Q. You went as a surveyor to examine this work?—A. I did.

Q. By whose desire did you go?

A. By Mr. Wyatt's desire.

Q. On what day did you go?

A. The 26th of April, 1797.

Q. In company with Mr. Cockerill, and some other gentlemen?

A. Exactly so.

Q. How soon after this examination did you make your report to Mr. Wyatt?

A. Two days after.

Q. Were you at all examined in the presence of Mr. Wapshott and Mr. Moser?

A. I was not examined.

Q. Were you examined at any time before any arbitrators?

A. I did not consider myself as being examined by any arbitrators?

Q. Did you attend at any other meeting of reference, except that meeting?

A. No,

A. No, I did not.

Q. Do you know what use Mr. Wyatt made of this afterwards, or whether it was communicated to the other side, that any such survey was made?

A. No, I did not: I heard late last night that this was to come on to day.

Q. Did you examine the railing of the rest of the noblemen in the Green-Park?—A. No.

Q. Did you examine the railing of Lord Carrington?—A. No.

Q. You have passed by it?

A. Yes, but not to examine it.

Q. Does it correspond with the rest of the railing?

A. I never examined it, but have reason to think it corresponds with the rest.

Q. Did you weigh any lengths, or any part of it, as you say you allow sevenpence a pound.

A. No, I went by the proportion of the work, and the goodness of it, and the encreased expence of the railing, in comparison with back stair-case railing?

Q. Did you judge how much it weighs by your eye only?

A. It was, to the best of my recollection, forty pound weight a foot.

Q. How did that appear to you?

A. Mr. Wyatt, I think, informed me, that forty pound weight would go to a foot.

Q. Have you weighed any part of it?

A. I did not weigh any part of it myself.

Lord

Lord Kenyon. You made your estimate upon a comparison of what you have allowed upon former occasions?

A. Exactly so.

Mr. Marryat. Twenty years ago you began to survey, how did you make your estimate at beginning your business, you had nothing then to compare it with?

A. We could only go by what was considered by the profession as the fair current price in the trade.

Q. Then all your knowledge, at last, is borrowed from the conjecture of other persons. Have you ever given yourself the trouble of enquiring into the prime cost of the material, and of knowing how many pound weight of material were used, and what the profit was to be added to the prime cost?

A. Upon many occasions I have.

Q. Have you upon iron railing?

A. I do not know that I have.

One of the Jury. How much per cent. is allowed the surveyor for his survey. — A. Five per cent.

Juryman. Is that upon the gross amount of the bill?—Yes.

Juryman. Then, consequently, any deduction made from the bill, is a deduction from the profit of the surveyor?

A. Doubtless.

Robert

Robert Brettingham, Esq. sworn.

Examined by Mr. Best.

Q. You are a surveyor?

A. I am.

Q. Have you seen this iron railing in the Green-Park?

A. I have.

Q. Have you ever made any estimate of the charge?

A. Not lately.

Q. Have you ever done it?

A. I did sometime ago.

Q. To what did your estimate amount?

A. At the time I signed my name, I was satisfied, that the prices charged for the work done were perfectly fair and reasonable; but it is so long ago, that I do not remember the particular charges. I remember the front railing, and the cross railing. I remember the front railing was charged at sevenpence a pound, which I conceive to be fair and reasonable, having had the opinion of workmen.

Q. Was that, according to your experience, a fair and reasonable charge?

A. I think it was.

Q. Did you look at this work?

A. I did.

Q. Was it done in a workmanlike manner?

A. Very

A. Very much so.

Q. Were the materials proper for such work?

A. I believe they were.

Mr. Brettingham.

Cross examined by Mr. Mingay.

Q. Did you look at this work, attended by any person on the other side, to point out how it was that there was all this difference of opinion upon the price? Who was with you, when you examined this railing in the Green-Park?

A. I was there several times.

Q. Who desired you to examine it?

A. I went voluntarily, of myself. I heard it reported, I do not know where, nor by whom, that there was a difference of opinion about the value of that work, and I went to look at it out of curiosity, not having any thing to do with it.

Q. And did you put your name down out of curiosity?

A. No:—Afterwards I understood the matter was referred to Mr. Wyatt, and such other persons as he chose to mention, with him, and in consequence I attended.

Q. Who desired you to attend?

A. The subject was first broached to me by Mr. Wyatt, who requested me to attend.

Q. You

Q. You have heard, I suppose, that an honest smith, of the name of Hanson, had begun to let the public into the secret?

A. It appears to me that Mr. Hanson proves the contrary himself.

Q. When your curiosity led you to the Park, did you ever happen to cast your eye upon Lord Carrington's railing?

A. I must have passed Lord Carrington's railing in walking down there. I did not take any particular notice to whose house the railing belonged; I do not know whose house the railing was opposite that I examined.

Q. Did you examine the whole railing.

A. I did not.

Lord Kenyon. Is there any difference?

A. The general impression, to a person unacquainted with the subject, may be, that there is no difference; but there may be two divisions of the same apparent pattern, which may be of very different value.

Mr. Mingay. Of what iron is it made; is it Swedish iron?

A. I must decline answering that; that is not the province of a surveyor.

Q. If a surveyor is to tell us the price of the railing, I think he should know that. Do you know the difference of the price between Swedish iron and English?

A. I

A. I beg you pardon—

Q. Then you do not know the difference between Swedish and English iron?

A. I did not go with a view to that detail.

Q. If I were to desire you to go and look at the railing round Saint Paul's church-yard, to tell me whether it was made of Swedish or English iron, could you tell me; and could you tell the difference of the price?

Mr. Erskine. They cannot tell when they are painted.

Mr. Mingay. But when a person is called upon to estimate the value, suppose he was to take out one of the rails, and break it;—supposing Lord Romney, or the Marquis of Salisbury, had given you leave to take up the railing, and to do what you pleased with it, could you tell whether it was made of Swedish or English iron? and, if you know the difference between one commodity and the other, do you know the difference of the price?

A. I think I do know.

Q. Now tell us the difference. What is Swedish iron per hundred, or per ton, and what is English?

A. I beg your pardon,—

Mr. Mingay. Do not beg my pardon; answer the question.

A. The way I would estimate it would be, what I conceive to be the fair value of it.

Q. Supposing

Q. Supposing a man, who does know the difference between Swedish and English iron, both in quality and in price, and who has worked up a great deal of each sort, were to take up the railing, and estimate, in the clearest way in the world, what the price of the materials, and what the labour were, to a farthing, do not you think that would be the fairest way of judging what a gentleman ought to be charged for it?

A. The way I should consider, according to the practice I have had, is what is the fair, and the usual price for such a description of railing.

Q. Then, in order to begin, I ask, Do you know Swedish iron from English?

A. *I cannot say positively that I do.*

Q. Then, a man who really makes this railing, not a man who merely goes and stares at it; a man that works at it with his hands, and who knows the difference in the price of the iron, he would know what ought to be paid for this work better than you.

A. If he knows the detail of it.

Mr. Best. Can any person tell the difference between Swedish and English iron, when it is covered with paint?

A. Certainly not.

Lord Kenyon. You are not only a surveyor, but are yourself a workman?

A. No.

Lord

Lord Kenyon. Have you never done any work?

A. No.

Lord Kenyon. Do you recollect an instance where fifty per cent. has been taken off a bill, after you had estimated it to be a proper charge?

A. I have no recollection of such a thing.

Lord Kenyon. Are you sure that has not happened? Tax your memory.

A. I have no recollection of the circumstance.

Lord Kenyon. Do not you recollect a bill of between two and three thousand pounds, which you had passed, being reduced to a little more than one thousand?

Mr. Brettingham. Work done under my direction?

Lord Kenyon. Work done either under your direction, or under your survey.

Mr. Brettingham. Between two and three thousand pounds reduced to one thousand?

Lord Kenyon. Between two and three thousand pound reduced to a little more than one thousand.

Mr. Brettingham. I do not recollect any such instance. I should be obliged to your Lordship to name the case: if there is such an instance, I should beg to know it?

Lord Kenyon. It is not any person concerned in this cause. Do you recollect a bill you had settled at two thousand three hundred pounds, being afterwards reduced, by a man of unquestionable character, whom we all know, to thirteen hundred

and fifty pounds, and that money being received in payment by the party who had made the bill?

A. I do not recollect any such circumstance.

Lord Kenyon. Mr. Lowton, who sits under me, is the person who reduced the bill; and, after taking off *something more than fifty per cent.* the bill was received.

A. No: I should be glad the instance to be mentioned. I do not know it.

One of the Jury. Do you ever charge more than five per cent. for your commission, for the settling of a bill?

A. Certainly not.

Juryman. But any deduction made from a bill, would be a deduction from your profits, as you are allowed a per centage upon the gross amount allowed?

A. Yes; we are.

Lord Kenyon. Is it usual to take five per cent. from your employer, and to take also a poundage from the several workmen employed in the detail of the business?—A. No.

Lord Kenyon. Have you never done that?

A. No.

Lord Kenyon. Recollect yourself, before you answer the question?

A. I have no recollection of it.

Mr.

Mr. Alexander Brodie sworn.

Examined by Mr. Erskine.

Q. Are you acquainted with the sort of work we are enquiring about?—A. Yes.

Q. You are not a surveyor?—A. No.

Q. How long have you been acquainted with this species of work, or with any work in the iron way?

A. I have been forty years in business for myself in that line.

Q. I believe this business was submitted to your reference, jointly with a Mr. Jackson?

A. It was.

Q. I need hardly ask you, whether you made all due examination into it, in order to collect whether the charge was reasonable or unreasonable?

A. I examined the work very particularly, and also the charges for such work.

Q. What was the result of your judgement upon the subject? what did you allow per pound?

A. My sentiments were, that sevenpence per pound was a very just charge; the calculation by the foot was about sevenpence per pound, which I think was a fair charge, and not too much.

Q. When you come to an estimate of sevenpence a pound, how do you collect the weight from the foot?

A. I took the weight according to what was given; I did not take any of it up, nor weigh it.

Q. Have you had an opportunity frequently of examining works of a similar nature?

A. I have; but not lately.

Q. Is that the usual charge made in the trade?

A. I think it is a very low charge; I would not do it for the money.

Q. From your acquaintance with the price of the materials, the price of labour, and every thing else that is to be taken into consideration, in estimating the profit, do you believe, that upon this work Mr. Mackell has a profit of between sixty and seventy per cent.?

A. No; not near half the money. If I had done it, I do not think I could have got a man in my shop to have done it for me, to have got ten per cent. by it.

Q. And you would not have done it for that?

A. No.

Q. Did you examine whether it was good workmanship or not?

A. I examined it particularly; very little work can be done better: it is all upon a hanging level, which costs a great deal more trouble than on a straight line, as every bar must be made to that level.

Q. Taking into consideration, the materials, the workmanship, the mode of the execution, such as you have been now describing, is sevenpence a pound a fair and reasonable price?

A. I

A. I think a very fair and reasonable price, so far as I can judge.

Q. Are you acquainted with the sort of railing that is called back stair-case railing?

A. Yes; but that is nothing equal to this railing.

Q. Supposing back stairs railing worth sixpence per pound, is a penny advance, for this species of work, a reasonable advance?

A. A very reasonable one.

Mr. Alexander Brodie,

Cross examined by Mr. Gibbs,

Q. These surveyors are very ignorant people, and use your poor workmen very ill?

A. I believe they do.

Q. They are too sharp for you?

A. I do not know; I never had much to do with them.

Q. Your bills have generally been paid, without being surveyed by any of them?

A. Mostly.

Q. I tell you why I say they use you so ill: you cannot get a living profit for them; for you say, at this charge you would not have got ten per cent.: these ignorant blockheads thought you would get twenty-five; and they allow twenty-five per cent. profit.

G. &

A. That

A. That may be, for a man that can get nothing else to do ; I get twenty-five per cent. profit upon what I have to do.

Q. Just as if I were to undertake to make railing, I should be a loser by it, though I charged twice as much as Mr. Mackell. So you think, having a great many other avocations, you should not have got ten per cent. by this ?—A. No.

Q. Was this matter referred to you ?—A. Yes.

Q. And afterwards you recommended M. Kendrick ?

A. No ; we had the meetings at Mr. Kendrick's.

Q. However, Mr. Kendrick was to be substituted in your place ?—A. No.

Q. I thought it was to be referred to him ?

A. He is a person particularly acquainted with Mr. Jackson.

Q. I will presently read to you a little bit of advice you gave him. You could not go through this examination yourself, you never examined any witnesses ?—A. No.

Q. You did not take down the work ?

A. I could see it in front.

Q. It was painted, you know, and no man can tell what sort of iron it is where it is painted, without taking it down ?

A. One can see the joints.

Q. You shall take it which way you will, and either way ; I shall knock your head against the witness

witness that was called before. Can you or not see the quality of the iron through the paint?

A. I do not say you can. It is a difficult matter for any man to tell whether it is Swedish or English iron.

Q. You cannot see what sort of iron it is through the paint.—A. No.

Q. It must be good iron to make good railing?

A. It must to make that sort of railing.

Q. If that railing had been made with bad iron, and had been completely painted, and you had only had to view it with the paint on, should you have known that it was bad iron?

A. I do not think they could have made it at all with bad iron; they must have been losers by it if they had.

Q. Laying out of the case whether they would be losers or not, could you judge without taking the paint off what iron it was?

A. I should judge it was good iron with the paint on. They would lose more than the price of the iron in working it if it was bad iron.

Q. You did not take any part of it down?

A. No.

Q. Nor weigh any part of it.—A. No.

Q. You know that the noblemen, who had employed Mr. Mackell to do this work, disputed their bills?—A. Yes.

Q. You know that there was a suspicion that the charge was too high?—A. Yes..

Q. Did you examine any of these witnesses, or did you act merely from a view of these rails through the paint?

A. I acted merely upon my own judgement.

Mr. Gibbs. Your opinion was formed upon this view you had of it? Now I will read the letter you wrote to Mr. Kendrick, to whom it was to be referred afterwards,

“ Dear Sir,

“ I have sent you Mr. Mackell's agreement for
“ the iron railing in dispute, which you can best
“ judge by the mode it should be settled according
“ to the estimate given in, and accepted by the se-
“ veral noblemen and gentlemen; there is several
“ of them is paid their bills, and made no com-
“ plaint, and according to the best of my judge-
“ ment I think there is no reason for it, as the work
“ is done in the very best manner, and completely
“ fixed up as well; therefore I think the charge a
“ fair one.

“ I am, Sir,

“ Your friend and well-wisher,

“ ALEX. BRODIE.”

This was to the gentleman to whom it was to be referred. Mr. Brodie, you were forced to go out of town about this time?

A. I

A. I was obliged to go out of town.

Q. Then, whether you did not turn this business over to Mr. Kendrick, with this recommendation, by which he was to conduct himself?—A. No.

Q. How came you to write this letter?

A. That was wrote at the time of Mr. Jackson's settling that matter.

Q. What had Mr. Kendrick to do with it; why did you write this letter to him?

A. No other than as an old acquaintance.

Q. Was this all by way of curious information given to him. "I have sent you Mr. Mackell's agreement for the iron railing"—

Mr. Erskine. Was there any agreement to give Mr. Kendrick any jurisdiction?

Mr. Mingay. None at all.

Mr. Gibbs. Is Mr. Mackell any acquaintance of yours?

A. I have known him some years, and I believe there is not a man in London who could do that business upon more easy or fairer terms than Mr. Mackell; he can do that work better than Mr. Hanson.

Q. He is a better workman than Mr. Hanson?

A. He is a workman, but Mr. Hanson is not; and so I could do the work myself.

Q. You could do it better than Mr. Hanson could?

A. Yes; I think so.

Q. As

Q. As you are so much better workman, and have so much more skill in the business, you of course can afford to do it cheaper than Mr. Hanson?

A. No, I do not know. Mr. Hanson may do things to lose by them.

Q. And so may you, if you like. You know perfectly well, that experiments were tried upon parts of these railings, which were taken down by Mr. Jackson, your brother arbitrator?—A. Yes.

Q. You know very well you were desired to look at those experiments, and refused to do so?

Mr. Brodie. What experiments?

Mr. Gibbs. The experiments of taking down the work, weighing and examining it, and seeing what it was fairly worth. Whether you did not, when desired to look at the experiments produced by the witnesses on the part of the noblemen, refuse to look at them?

A. I do not recollect that.

Q. Will you swear that you did not refuse when you were desired to look at them; and said you could judge yourself?

A. Yes, I could judge as well upon seeing the work.

Q. Did not those witnesses who were produced by the noblemen for whom this work was done, offer to exhibit the calculations made of the cost of the work, and did not you refuse to have any thing to do with them?

A. I do not look upon it that the calculations were proper.

Q. And therefore you were above looking at them?—A. Yes, I was.

Q. You say this was not turned over by you to Mr. Kendrick. I want to ask you whether this be true, “ That Mr. Brodie, of Carey-street, called on “ Mr. Kendrick, at his house, about the eleventh “ or twelfth of January, and said, as being an arbitrator for Mr. Mackell, and told the said Mr. “ Kendrick, that he was going into Shropshire “ to his works, and should be away for some time, “ and he should not have time to look any more “ into it, but would make oath in any court in “ England, or any where, that the work was worth “ all the money that was charged, and only a fair “ price charged, or words to that effect; and the “ said Mr. Brodie requested Mr. Kendrick to look “ into the said business, in behalf of him, which “ Mr. Kendrick promised to do; and Mr. Kendrick “ said, he did apply and see to some of the competent and ablest judges in the kingdom, of that “ kind of iron work in question, as Mr. Kendrick “ verily believes, and they promised to see the said “ business, and give their opinion.”

Is it true that this passed between you and Mr. Kendrick?

A. To meet at Mr. Kendrick's; that was appointed, as he was a particular friend of Mr. Jackson's.

Q. How

Q. How came you to appoint Mr. Kendrick?

A. I did not appoint him.

Q. Did not you recommend Mr. Kendrick to be your substitute to take your place?

A. No, I did not.

Q. Will you swear that?

A. I think I can.

Q. Will you take upon yourself to swear that you did not recommend Mr. Kendrick to take to this business after you?

A. I understood from Mr. Jackson, the last time I met him at Mr. Kendrick's, that the whole business was settled. I went next morning to Mr. Mackell, before eight o'clock, to let him know the thing was settled, but there was something arose afterwards,

Mr Alexander Brodie,

Re-examined by Mr. Erskine.

Q. Had not Mr. Jackson and you once agreed upon this subject?

A. I understood so, and went to Mr. Mackell to let him know.

Q. Did you write that letter to Mr. Kendrick, in order to instruct him how he should make an award between the parties, as your substitute?

A. No.

Q. Is Mr. Hanson a working smith?

A. I

A. I never heard that he was, or that he knew any thing himself about working.

Q. He employs other people, who may be very good workmen; but was Mr. Hanson bred to the trade, as a working smith, as Mr. Mackell was?

A. No, no, quite differently.

Q. When this matter came to you and Mr. Jackson, you saw the bills which had been delivered, and looked at the work, and you thought all the bills were reasonable.—A. Yes.

Q. You thought yourself not warranted to make any deduction whatever?

A. I really thought so.

Q. Ten or eleven or sixteen per cent. is not perhaps a sufficient retribution to the workman, he ought to get more. But should you think an imposition of ten per cent. a very extraordinary imposition. If a party charged ten per cent. more than ought to be charged should you think that right. In short, did you think ten per cent. so small a sum that it was not worth your while to consider whether the bills had over-rated the customer to the amount of ten per cent.?

A. No, I did not judge by that.

Lord Kenyon. Mr. Wyatt you know?

A. I know Mr. Wyatt.

Lord Kenyon. Mr. Wyatt is a competent judge?

A. I do not look upon Mr. Wyatt to be so good a judge as myself.

Lord

Lord Kenyon. If Mr. Wyatt has in some instances taken off sixteen, in many others eleven, and in others eight or nine per cent. you must think that he has done injustice to the party in thus reducing the original bills?

A. I cannot say that with regard to other people.

Lord Kenyon. In your judgement, the bills were to be taken as presented by the workmen, you think it was a reasonable charge?

A. I do.

Lord Kenyon. Mr. Wyatt, in his awards, took off sixteen per cent. from Lord Romney's bill.

Mr. Erskine. I wish to call back Mr. Wyatt.

Mr. Wyatt called in again.

Mr. Erskine. I shall be obliged to you if you will state to my lord and the gentlemen of the jury, what was the foundation of the deductions you made in your second award?

A. It was chiefly upon the party-fence, excepting Lord Romney's.

Lord Kenyon. From the Marquis of Salisbury's, from Lord Dundas's, and from Sir John Hort's bills, you have deducted eleven per cent.; from Lord Yarborough's nine per cent.?

A. In the first instance there were some mistakes in the measurement. I had it all measured: that occasioned a variation in a small degree. I had offered terms to Mr. Moser, to deduct from the party-fence. I do not recollect how much it was,
but

but when I came to have the work measured, I was determined not to go from the proposition I had made to him. I was determined he should not say I had acceded to a thing and afterwards gone from it. I deducted as far as that per centage went, according to the measurement. With respect to Lord Romney's, Mr. Hanson asserted that old stone had not been given credit for, that old iron had not been given credit for to a certain amount; I firmly believe now it was no part of Mr. Mackell's province to give credit for the stone, but I find now upon inquiry, the stone-mason was to have given credit for that.

Lord Kenyon. You were to do justice between the parties; either you did make your award upon proper ground or did not, there is no alternative?

A. I did. I said before, that, though I made that deduction from Lord Romney's bill, I was not convinced in my own mind that the first charge was not right.

Lord Kenyon. Here are many more besides Lord Romney's?

A. They varied in quantities.

Lord Kenyon. Here is Lord Moira's, there is no deduction at all from?

A. Lord Moira's had no party-fence.

Mr. Erskine. We want to have the principle upon which these deductions were made?

A. Some arose from a variation in the measurement which I had measured after the first award.

The

The deduction from Lord Romney's arose in the way I mentioned. Mr. Hanson insisted that the stone had not been given credit for, and that there was a quantity of old iron: I did, without any satisfaction to myself, admit that, in order to reconcile my Lord Romney.

Q. That Mr. Mackell might not be engaged in a dispute with his Lordship?

A. I had no other reason. I assure you, upon my oath, that if the thing was to come over again I should do exactly the same thing.

Mr. Gibbs. You just now said, that before you made your first award, you did examine witnesses?

A. I did.

Q. Did you examine any on the part of the noblemen?

A. Yes, his name was Huckins.

Q. Was he the only one?—A. Yes.

Q. Were any others offered?

A. None offered.

Q. Do you swear that?—A. Yes.

Q. You examined only Huckins?

A. Yes; I examined another, who gave his opinion on the part of the noblemen; and a third person whom I did not know.

Mr. George Wapshott sworn.

Examined by Mr. Law.

Q. You are a workman in this business?

A. A smith and workman.

Q. Did

Q. Did you attend before Mr. Wyatt, upon a reference?

A. I did; I attended at Mr. Ball's, up by Berkeley-square

Q. Had you an opportunity of forming your judgement upon the whole of this work, and what was a fair charge for it?

A. I formed my judgement before I waited upon Mr. Wyatt.

Q. Is sevenpence a pound, in your judgement, a fair and reasonable charge for this railing?

A. Sevenpence a pound for the front; and I will explain presently why sevenpence a pound is a fair price. I had seen the work some considerable time before I waited on Mr. Wyatt, I had been several times to view it, to measure it, and to ascertain the value of it. In consequence of which I measured the whole of it, I counted, I believe, the whole of the bars; but, however, I was given to understand, that it was charged by the foot, in consequence of which, I told Mr. Mackell, I would give him the value of the iron work, but as for the agreement that he had made for stone work, brick work, and painting, I was not competent to give a value upon that, but he should refer that to the different tradesmen that did that work. In consequence of which, I only gave the value of the iron work as it stood.

H

Q. At

Q. At sevenpence a pound, is there more than a fair allowance of profit upon the work, such as that work was?

A. There is no more; by measuring the work, taking the standard and stays into the upright work, and the darts and the small spikes, I calculated it at forty-two pound to the foot, the major part of the iron is English, the darts and possibly some of the other, may be Swedes; but knowing it was not all Swedes, I put the English iron at twenty shillings a hundred weight, and added two shillings per hundred weight to the iron, for the difference between that part of the Swedes iron that was added with the English; in consequence of which, I valued the raw iron at twopence halfpenny per pound, and the workmanship I valued at twopence farthing per pound; there is a small fraction, and I would wish to observe, that upon valuing the whole of it by the hundred weight, I allowed one pound two shillings per hundred weight; but, at a guinea a hundred weight, was twopence farthing per pound, and brought it to a more equilibrium. I valued the labour at twopence farthing a pound; I allowed for coals, tools, shop-rent, and waste of the iron; the tools are, the forge, the anvil, the bellows, the hammers, and various little things, which are obliged to be made use of to complete the work. I allowed in the foot two shillings and sixpence for coals, shop-rent, tools, and waste. I
allowed

allowed fourpence halfpenny per foot run for the lead; and for fixing it as it stands in the work, I made that per foot run nineteen shillings and sixpence. I allowed sevenpence halfpenny a pound, which brought one pound four shillings and sixpence, and when I put the profit, for I will tell you my mode of ascertaining the profit of smiths work, and which I have made the study of a good part of my life. Whatever the materials, the iron, coals, waste, and other necessaries cost, I make a calculation of, I divide them into three parts, and add another third part to the cost, that makes a fourth, and by that calculation it made one pound four shillings and sixpence a foot, and left a profit of five shillings per foot run, and I believe you will find, that five shilling per foot run, comes to twenty-five shillings a foot, or thereabouts; there may be a small fraction per cent. and the reason I value it in this way, is for a certain rule, I laid down some years back, why that profit should be allowed. I consider that to be a reasonable profit, for this reason: I drew my calculation, that, in order to carry on business, a man must have some capital, in consequence of which I allow five per cent. upon his capital. In the next place, for the loss by bad debts; workmens mistakes, and tools, and iron, which every smith almost is subject to have purloined from him, I allow five per cent. more; for house-rent, shop-rent, tools, taxes, &c. I allow five per cent. more. I then

allow five per cent. for the trouble of a tradesman's book-keeping, seeking after trade, writing out his bills, and collecting his money. And, in the next place, I allow five per cent. for superintending and directing his workmen, which makes the calculation I have stated.

Q. And, from your acquaintance with the trade, the expence of the articles, and the risk attending it, is that a fair allowance of profit, to contain an indemnity against the charges you mention?

A. Having worked in the manner that this work is, which we call heavy work, we reckon it twenty-five per cent. in a hundred pounds; but upon light work, where there is nothing to pull the scale down, possibly there is more allowed. Suppose a man was sent for to make a key, or to make a key-hole to a lock, a man's time must be taken then.

Q. You do not estimate it according to the weight of the gross material, in that case, but according to a different rule of calculation?

A. Yes.

Q. Is the estimate which you have stated, of twenty-five per cent. the usual profit in the trade, or an excess in your charge, above that which other people charge?

A. I believe, upon examination, you will find it is allowed by all of the trade that I belong to.

Q. Is the work in question well executed; and were the materials, according to the best of your judgement, proper materials to be employed?

A. The

A. The work is well done ; and it is not a common piece of work, for this reason, it is upon a hanging level, and likewise upon an uneven kirb ; the ground, from the lowest to the highest part, is from twelve to fourteen feet, in consequence of which the work must rake with the ground, or it will not stand upright, it is upon a hanging level, that is attended with more trouble in fixing, and the plain work is more trouble in making.

Mr. George Wapshott.

Cross-examined by Mr. Mingay.

Q. You say this is the way in which people in your way of doing business make their charges ?

A. Yes.

Q. That is just what I am complaining of. We will go by steps ; when Mr. Wyatt met for the purpose of examining the witnesses, and to reconsider his first award, after the complaint was made, you attended ?—A. Yes.

Q. You attended as counsel for Mr. Mackell, did not you ?

A. I was never brought up for a counsellor.

Q. But you examined the witnesses, and cross examined Mr. Hanson, did you not ? How came you to attend ?

A. I will tell you ; after the first award was given by Mr. Wyatt, and returned back again, a

Mr. Rawlinson, who is now in court, called upon me, and informed me, —

Q. I am not asking you what any one informed you: I ask you whether, in point of fact, you did not attend and take a part before Mr. Wyatt, the arbitrator, as a friend of Mr. Mackell's, in order, if you could, to get Mr. Mackell's charges established?—A. No.

Q. You swear that?

A. I swear that.

Q. Did you not question the witnesses on the other side?

A. Because why, I was appointed so to do.

Q. By whom were you appointed so to do?—

A. Mr. Mackell came to me afterwards, and told me, that his bill was in dispute, for the work done by him for the several noblemen in the Green-Park; and asked me, if it would be convenient for me to go and view it, and give a valuation upon it.

Mr. Mingay. I am not asking you what the plaintiff said. Did you attend the arbitrator, at his instance?

A. I was given to understand it was at the request of the several noblemen?

Q. The question I ask is this: Did you, before the arbitrator, Mr. Wyatt, when he was there to examine all the witnesses, put any one question to any man, in order to attempt to establish Mr. Mackell's charge, before Mr. Wyatt?

A. Not

A. Not particularly so, but from my own judgement.

Q. Did you not cross-examine Mr. Hanson and every witness that appeared against Mr. Mackell's charge, in order to shew that their judgement was erroneous?

A. I cross-examined them all : I was so directed ; that all the evidence were to be examined upon oath ; and I was given to understand that the gentlemen would not be satisfied until this examination had taken place, and I was called upon as an arbitrator, with Mr. Moser. Mr. Moser was an arbitrator on the part of Mr. Hanson, and Mr. Wyatt was umpire.

Q. The arbitrators were Mr. Brodie and Mr. Jackson?

A. This is the second piece of business I am speaking of.

Q. Did you not take a strong part in favour of Mr. Mackell, and against the deductions that Mr. Hanson attempted to make?

A. My dear Sir, the book was not published then.

Q. I know that; did not Mr. Hanson appear as a witness, and many others, in order to shew that these noblemen were imposed upon by Mr. Mackell's charges?

A. He did appear, and all of them, in order to ascertain the true value of the work.

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Q. I am not asking you what any one informed you: I ask you whether, in point of fact, you did not attend and take a part before Mr. Wyatt, the arbitrator, as a friend of Mr. Mackell's, in order, if you could, to get Mr. Mackell's charges established?—A. No.

Q. You swear that?

A. I swear that.

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A. He did appear, and all of them, in order to ascertain the true value of the work.

Q. Did not you attend in order to enforce Mr. Mackell's charges? did not you take a decided part as much as a counsel in favour of Mr. Mackell against Mr. Hanson's estimate of the charges?

A. I suppose you wish to say this, that I was partial upon the business.

Mr. Mingay, I do positively.

Mr. Wapshott, I say the contrary.

Q. Did you not take a part as agent or friend, or call it what you will, for Mr. Mackell, and ask questions, in order to establish his demand to the utmost extent? Did not you manage it before the arbitrators for Mr. Mackell?

A. I managed it jointly with Mr. Moser; I should not have went without I had been called upon so to attend.

Mr. Erskine, He is named in the second reference.

Lord Kenyon, You are named as a manager; why cannot you confess that you appeared in the character in which you are named?—**A.** I did so.

Mr. Mingay, When it went a second time to Mr. Wyatt, Mr. Wyatt was to make his award; you, on the part of Mr. Mackell, as his friend, were to enforce his charges as much as you could, and Mr. Moser was on the behalf of the noblemen and gentlemen.

A. I did not go to enforce any such thing; I went to get at the truth of it, and had not Mr. Mackell's

Mackell's charges been consistent with my judgement, I should have told him, and all the rest of them, that his charges were not fair.

Q. Was there not a quarrel some time ago between you and some smiths that worked a little under price? Do you recollect that? I do not know whether you are the same person; perhaps I may be mistaken.

A. Possibly you are.

Q. A gentleman of the name of Macnaughtan?

A. That was not about charges.

Q. What was it about?

A. It was to prove the right of trade.

Q. You quarrelled with braziers and copper-smiths working at a low rate—were you on Mr. Macnaughtan's side, or how?

A. I was on the part of the trade.

Q. Against those that were working at under prices?

A. It was not to establish prices, or say any thing about prices; but many people had been imposed upon by persons going into the trade that are not of the trade.

One of the Jury. You have mentioned several five per centages, upon capital, &c. &c. under which of those heads comes the allowance to the surveyors?

A. I left that entirely out of the calculation, because I never gave them any thing.

Mr. Anthony Fortune sworn,

Examined by Mr. Garrow.

Q. Are you a working smith?—A. I am.

Q. How long have you been in that way of business?

A. I was brought up a smith from fourteen years old.

Q. Are you well acquainted with the nature of the work, and what are fair prices to be charged for it?—A. I am.

Q. Have you examined the work in question?

A. I have.

Q. Is it well executed?—A. It is.

Q. Does it appear to you to be made of a good material?—A. It does.

Q. Do you think twenty-five shillings a foot a fair and reasonable charge, or an immoderate one?

A. I calculated it at twenty-four shillings a foot.

Q. You think that is not too much? Does twenty-four or twenty-five shillings a foot allow a profit of sixty or seventy per cent. or any such sum?

A. It does not; and I can make it appear that it does not.

Q. State how you make that appear.

A. First I calculate the raw materials; I allow for the iron one pound four shillings a hundred weight; labour, shop-room, and tools, one pound three shillings; coals, lead, and waste, five shillings and eight-pence, that makes the amount two pound twelve

twelve shillings and eightpence; then I allow twenty-five per cent. profit upon that.

Q. Do you think that a reasonable profit?

A. I do: all that together brings three pound five shillings and tenpence a hundred-weight, twenty-five per cent. upon that, is thirteen shillings and twopence; then, by the foot I make it one pound four, which, I think is perfectly correct.

Q. I do not know whether this supposes prompt payment?

A. If there is prompt payment, there is a discount allowed.

Q. This charge supposes that the usual credit will be taken?—A. Yes.

Q. You find, by your experience in trade, that there is usually some credit taken?

A. I am too well acquainted with it, that there is too long credit taken.

One of the Jury. What discount would you allow, upon this calculation, for prompt payment?

A. It is according to the quantity done, that I would allow.

Juryman. Upon a couple of thousand pounds, how much per cent. would you allow?

A. Five per cent.

Juryman. No more?—A. No.

Mr. Erskine. I am afraid he has not often the opportunity of allowing a discount.

Mr.

Mr. Anthony Fortune.

Cross-examined by Mr. Gibbs.

Q. Did you examine this work.—A. Yes.

Q. All of it?—A. Yes.

Q. Did you examine Lord Carrington's railing?

A. I do not know which is Lord Carrington's.

Q. When did you examine this work?

A. Just before I was examined upon the arbitration.

Q. You have examined it since, have you not?

A. Yes, I have been by several times.

Q. You have been desired by Mr. Mackell to look at it since, have you not?

A. Not by Mr. Mackell.

Q. You were not with Mr. Wyatt and the rest of them, were you?

A. Yes, I was, just about the time of the arbitration. I believe it was during the time of the arbitration.

Q. You were never desired to examine Lord Carrington's, were you?

A. I examined the whole of it.

Mr Gibbs. We have been going on a great while now, without having the pamphlet itself proved: I should be glad if my friends would prove it.

Mr. Erskine. The second witness said he had it from your client.

Mr. Best. The passage we wish to read is in page 25.

Mr.

Mr. Lowton reads.

Page 25. " I meant no reflection upon Mr. Wyatt, for allowing Mr. Mackell an apparent clear profit of between sixty and seventy per cent. he might think this quite right, and Mr. Mackell might not be satisfied with less; he has undoubtedly a right to fix his own rates of profit."

Mr. Mingay. Read on.

" All I wish to prove is, that I was founded in my objection to his charges, and warranted in the prices which I had considered to be reasonable, by the general practice of the trade, and the rates of profit usually allowed, and which I, in common with many others in the same line, had been content to accept upon works of a similar nature."

Mr. Mingay. I cannot defend my client, unless the whole of the book is read, I submit to your Lordship, that they must read the whole of it, and not pick out a particular sentence.

Mr. Erskine. You read it as your evidence?

Mr. Mingay. Oh no, we don't.

Lord Kenyon. They must read the whole of it.

The pamphlet was put into court, and several extracts were read. See the Appendix.

Mr. Garrow. Mr. Cockerell states, that he has made a mistake in the result he has given; he begs to be permitted to explain it.

Mr.

Mr. Cockerell called again:

Mr. Garrow: You will state the mistake you wish to correct.

Mr. Cockerell: I mentioned the sum of twenty-five shillings per foot; having previously stated it at sevenpence per pound. Seven-pence a pound upon forty pound to the foot, is twenty-three shillings and fourpence only.

Mr. Edmund Rawlinson sworn:

Examined by Mr. Best:

Q. What are you?—A. A smith.

Q. Have you seen this railing in the Green-Park?—A. I have.

Q. Is the work well done?

A. It is very well done.

Q. Have you made any estimate of what is a proper charge for that work?

A. It is worth sevenpence a pound. I have had eightpence a pound for upwards of eight hundred of the darts.

Q. Is sevenpence a pound a proper charge for that work?

A. It is as well worth it, as two sixpences are worth a shilling.

Mr.

Mr. Edmund Rawlinson.

Cross-examined by Mr. Marryat.

Q. The darts are the slightest part of the work?

A. They are very slight.

Q. Of course, they ought to be charged a great deal higher, in proportion?

A. There is more drawing in the one than in the other.

Q. I believe you some time ago estimated the stone work, and the materials, excepting the iron, at three shillings and twopence?

A. I know nothing about the stone.

Q. Did not you sign an estimate of the other work, at three shillings and twopence?

A. I am no judge of the stone or brick work.

Q. Did you make any lengths of this railing?

A. I made upwards of eight hundred of the darts alone, which I was paid eight-pence a pound for.

Q. Did you make any of the other work?

A. No.

Q. Were there produced, at the time, before the arbitrators, any work that had been made?

A. Yes.

Q. Was any account produced of the expence of the labour?

A. I was out of the room,

Q. You

Q. You observed, that corresponding pieces of railing were produced?

A. They were made straight, the others were made upon a hanging level.

Q. You saw some afterwards made upon a hanging level?—A. Yes.

Q. And there were some calculations produced, of the expence of it?—A. Yes.

Q. I believe there were a great many of the smiths that objected to this charge, were there not?—A. There were.

Mr. Edmund Rawlinson.

Re-examined by Mr. Best.

Q. You made part of this railing?

A. The darts, and was paid eightpence a pound for them by Mr. Mackell.

Q. Have you done similar works in the country?

A. Yes, twenty years ago, and then I was paid eightpence a pound for that.

Mr. Anthony Fortune called again.

Examined by Mr. Erskine.

Q. Do you know the railing upon each side of the gate on Constitutional-Hill?—A. I do.

Q. Is that railing of the same sort, and entitled to the same price?

A. It is not; it is made upon a level kirb, and the other upon a hanging level.

Q. Whether

Q. Whether there be any difference in point of trouble and expence to him who makes it, so as to make a larger price reasonably demandable for the one than for the other?

A. Yes; there is a penny a pound difference, or more than that. I would sooner have a quantity of this to make at fivepence halfpenny than the other at sevenpence.

Q. You would rather make this at fivepence halfpenny because of its being upon a level kirb, than make the other upon a hanging level, at sevenpence.

A. Yes; and should get a greater profit.

Mr. Anthony Fortune.

Cross-examined by Mr. Gibbs.

Q. As to this work upon Constitution-Hill, whose is it?

A. It is made for government.

Q. Where does it stand?

A. At the top of Constitution-Hill, Piccadilly.

Mr. Erskine. Your client asserts it in his book to be the same as Mr. Mackell's.

Mr. Gibbs. Do you know all the iron railing that ranges with this that was made by Mr. Mackell.

A. Yes; I know all the iron railing in the Green-Park.

I

Q. Is

Q. Is there any difference observable to you in any part of that iron railing?

A. There is considerable difference.

Q. It is all upon a hanging level?

A. It is.

Q. You know Lord Carrington's railing?

A. I know there is the railing opposite one house in particular that is not so well done as the other.

Mr. Gibbs. I dare say that is Lord Carrington's?

Mr. Erskine. I will prove it by the next witness.

Mr. Gibbs. You should not interrupt my examination of this witness, by telling me what your next is to prove; that railing opposite Lord Carrington's house, where is it?

A. I do not know Lord Carrington's house, from Lord Salisbury's.

Q. Does the work which is worse, join to this work done by Mr. Mackell?

A. It does.

Q. I take for granted, when you decide that it is worse, you have examined it accurately?

A. I have.

Q. Did you take it to pieces?

A. I did not, except by looking at it. I could take it to pieces by looking at it.

Q. By which you mean, that looking at it, you could, in your mind's eye, possess yourself of every part of it, and judge of it as if it were in fact taken to pieces.—A. Yes.

Q. I

Q. I have explained your meaning, have I?

A. Yes.

Q. Then I understand you, that looking at this railing which stands there painted, you could form as good a judgment of its merits, as if it were actually taken to pieces.

A. Exactly so.

Q. You could tell whether this or that part was made of Swedish or English iron?

A. I have great reason to believe—

Q. You must not get off—you told me you could judge exactly as well as if it were taken to pieces. I want to know whether looking at it through the paint at your age (your eyes are not perhaps quite so good as they have been) you can tell whether this is Swedish or English iron?

A. I can see through the paint if there are any defects in the iron.

Q. Can you tell whether it is Swedish or English iron, by looking at it through the paint?

A. I can see whether it is good iron or not.

Q. Can you see through the paint, whether it is Swedish iron or English iron?

A. I have every reason to suppose it is Swedish iron.

Q. That is not the answer of a man who means to deal fairly in his evidence. I ask you if you can see through the paint whether it be Swedish or English iron? Now, give me an answer, yes or no.

Q. Is there any difference observable to you in any part of that iron railing?

A. There is considerable difference.

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A. I have every reason to suppose it is Swedish iron.

Q. That is not the answer of a man who means to deal fairly in his evidence. I ask you if you can see through the paint whether it be Swedish or English iron? Now, give me an answer, yes or no.

A. I do not know that I can positively say so. I could tell if it were made of bad iron.

Q. Then seeing through the paint, you cannot swear whether it is made of Swedish or English iron?

A. No, I cannot.

Q. Is there any difference in the value of Swedish and English iron?

A. There is.

Q. Which is the most valuable?—A. Swedish.

Q. Now I hope I shall put this question intelligibly to you: As Swedish iron is more valuable than English, and as you cannot tell through the paint whether this is Swedish or English iron, how can you possibly through the paint tell what the value of it is?

A. I have taken a calculation of both, taking one part for Swedish, and the other for English, and then I form my judgement of twenty-four pound a ton for the whole.

Q. I must get back to the question. As Swedish iron is more valuable than English, and as you cannot tell the difference between Swedish and English iron through the paint, I want to know how you can tell the value through the paint?

A. I can tell the value as it is fixed, as Swedish or English.

Q. Have you estimated it both ways?

A. I have estimated that as it stands, it is worth sevenpence a pound.

Q. I

Q. I take for granted, as you had such a perfect view of this, as to enable you, through the paint, to use your own expression, to take it to pieces for all the purposes of examination, by your eye, that you can tell me precisely what Lord Carrington's railing is worth?

A. It is not worth so much by a penny a pound as the other.

Q. You take upon yourself to pronounce then as to the value of it, upon a view of this work after it is painted, without ever having taken down a single bar of it?—A. I do.

Q. You will take upon yourself, I suppose, having this infinite skill, to pronounce, that a man who had taken it down, who had rubbed the paint off, who had weighed it, who had made other iron of similar weight and similar workmanship, would not be a better judge of the value of it than you taking it to pieces with your eye?

A. I do not know that they could.

Q. When you say you do not know that *they* could, perhaps you mean that you do not know whether the man who took it to pieces would be a skilful man; but can you judge better of the real and intrinsic worth of a piece of iron work that is painted, looking at it through the paint, than by taking it to pieces, carrying it home, weighing it, having a piece of iron made exactly like it, keeping an account of the time it took your men, the coals consumed in making, and allowing for the

wear of the tools used in making it, whether you can judge better by your eye of all this?

A. I do not know that I can. I cannot tell exactly to an ounce weight so well as a person who has weighed it. If I had taken it down and weighed it, I should be a better judge.

Q. Then I may lead you on to the next conclusion, that those who have done that must be better judges than you?

A. They may know the weight better, but may not know the value of the work better.

Q. Suppose a man of experience, who has been used to work of this sort for twenty years, had gone through this process, would not he be a better judge of the value of it, than you, who only took it to pieces with your eye?

A. I should suppose he might.

Q. Cannot you get farther than that you should *suppose* he might. Do not you know he *must*?

A. To be sure he must.

Q. Where is this railing you say is not so good as the other? Is it towards the top or the bottom?

A. It is something central.

Q. Who shewed it you?

A. The person who made it, Mr. Tucker.

Q. He shewed you the work that he did?

A. Yes.

Q. And it was that you are speaking of?

A. Yes.

Mr.

Mr. Anthony Fortune.

Re-examined by Mr. Erskine.

Q. It is not necessary to ask you, whether a man who weighs iron cannot better tell within an ounce how much that iron weighs than he who only looks at it?—**A.** Yes.

Q. But although there is painting upon iron, cannot you tell by the quality and smoothness of it, whether it is good iron or not?

A. I can see by the work, whether it is good iron or not.

Q. How much, by your calculation, do you allow to be Swedish iron, and how much English iron?

A. I calculate upon one-third Swedish iron and two-thirds English.

Q. Can you possibly judge what it is worth without observing whether it is upon a hanging level, or an even kirk?

A. There is a difference.

Q. Does that work which you said was inferior, range itself upon the same row with the other?

A. It does.

Lord Kenyon. It would not occur to a common observer. I did not know that this cause was to come on. I walked by it, with two of my learned assistants in the court, and we, not knowing which were Lord Carrington's and which the other, could not distinguish; it appeared to us all alike. We had

heard there was some difference, and as we were coming to Westminster-Hall one day, we examined it, and could not discover any distinction:

Mr. Mingay. I have the man here who made the whole of it.

Mr. Rawlinson called again.

Examined by Mr. Best.

Q. Is the work of the railing before Lord Carrington's well done?

A. It is well done, but they have not closed the darts.

Q. Is it then so well done?

A. It is not so well done; that is a great fault, they will perish in a little time, and then come off.

Q. What is the difference in value in your judgement?

A. There may be a halfpenny a pound difference; there are two heats to every dart in doing this properly; that is a matter you do not understand.

James Messenger sworn.

Examined by Mr. Law.

Q. Are you a working smith?—**A.** I am.

Q. Have you seen the work in question in the Green-Park?—**A.** I have.

Q. Have

Q. Have you seen the railing immediately adjoining it, before Lord Carrington's house?

A. Not to examine it.

Q. How much per pound is the iron railing worth?

A. Sevenpence per pound.

Q. Does forty pound go to a foot?

A. Forty-one pound, in my calculation.

Q. Do you know the work that is upon Constitution-Hill?

A. Yes; I have seen that.

Q. Does this work in the Green-Park deserve a higher price than that?

A. No, not so much; that is a great deal heavier and higher.

Q. Which is heavier and higher?

A. That upon Constitution-Hill.

Q. Which ought to be charged the higher?

A. That in the Green-Park. That upon Constitution-Hill is upon a level, but that in the Green-Park is upon a hanging level, with different kirbs.

Q. Does that increase the labour, and warrant a higher price?

A. A great deal.

Q. What difference by the pound weight do you reckon for making the several works you have stated?

A. I make it a penny a pound difference.

Q. And you think that a fair allowance?

A. I do.

James Messenger sworn.

Cross-examined by Mr. Gibbs.

Q. This work is upon a hanging level?

A. It is.

Q. And that makes a difference of a penny a pound?—A. Yes.

Q. You really swear you think that makes a difference of a penny a pound?—A. Yes.

Q. Will you swear it costs you a halfpenny a pound more?

A. I can swear that I would not do that in the Green-Park for less than a penny a pound more: there is more trouble in it a great deal.

Q. Will you swear that it would cost you a halfpenny a pound more to do this upon the hanging level?

A. I will swear it would cost me a penny a pound more in the labour and the fixing.

Q. What more labour is there? You know the uprights are exactly the same; it can make no difference but in the bar that goes across?

A. And the bottom rail that they are framed in, and likewise the darts too?

Q. What difference is there in the darts?

A. The darts to the hanging level will not be workmanlike.

Lord Kenyon. All the palisades must stand perfectly upright, must not they?

A. Yes, all must be upright.

Lord Kenyon. Then what difference can there be in the darts; there is only the difference in the hole they go through?

One of the Jury. The foundation of the dart must be sloped a little.

Lord Kenyon. Has Mr. Hanson, by his proceedings, beat down the profits of the trade?

A. He certainly has tried at it,

Lord Kenyon. These are not the first smiths we have heard of, that have been alarmed. We know the history of a silver smith almost two thousand years ago—"Great is Diana of the Ephesians."

William Morris sworn.

Examined by Mr. Garrow.

Q. Are you a smith?—A. Yes.

Q. How long have you been in the business?

A. I was an apprentice to it.

Q. Have you examined the work in question?

A. I have,

Q. In your judgement, what is it worth?

A. Sevenpence per pound.

Q. Does that afford a fair and reasonable profit, or an exorbitant one?

A. Not more than a fair and reasonable one.

Q. Allowing that rate; does the smith get sixty or seventy per cent. profit, or only a fair profit?

A. Not above twenty per cent.

Mr. Marryat.

Mr. Marryat. Did you make any of these rails?

A. I did not.

James Flemming sworn.

One of the Jury. Have not we had enough of this? Can you give us any thing new?

Mr. Garrow. These are to the same head you have had already.

Juryman. I think we have had too many witnesses already.

Mr. Garrow. You will consider these then as giving the same evidence.

Juryman. I have no doubt of it.

Thomas Meaycock sworn.

Examined by Mr. Garrow.

Q. Do you work for Mr. Mackell?

A. I do.

Q. How long have you worked for him?

A. About sixteen years.

Q. Did you assist in making this fence railing in the Green-Park?

A. Yes; I framed it and fixed it.

Q. Was it wrought from new iron?

A. It was.

Q. Was it a good material?—*A.* It was.

Q. Was any part of it wrought from old iron?

A. Not a bit of it.

Q. You assisted in making the greatest part, I believe, and in fixing the whole?—*A.* I did.

Q. Are

Q. Are you sufficiently acquainted with the business, to be able to say how much is a fair and reasonable price for it?

A. I cannot say that.

Q. Is there more trouble in making this which is upon a hanging level, than if it were all upon an even level?

A. A great deal more.

Q. Is there more labour employed upon it?

A. Yes, there is, in taking the bars down upon a bevel.

Q. Are there more heats required in finishing the work?

A. Yes, in bevelling them.

Q. Do you know the part of the railing which was put up by Mr. Tucker, belonging to Lord Carrington?—A. Yes, I do.

Q. Did you take any of that down?

A. I took it all down, and refixed it again by Lord Carrington's order.

Q. Was it put up in a workman-like manner?

A. It was put up loose, and it was all obliged to be altered, by order of Lord Carrington and Mr. Harrison.

Q. Was that part which was executed by Mr. Tucker, as well executed as that which Mr. Mackell did for the other noblemen?

A. No, it was not; the darts were not drawn as they ought to be, and the top rail is not so thick by near the eight of an inch as our rail is.

Q. Supposing

Q. Supposing that of Lord Carrington's to be charged at sixpence a pound, do you think Mr. Mackell's worth a penny a pound more?

A. I think it is.

Q. Do you think there was as much more labour employed upon it as would amount to a penny advance?

A. I think there was.

Q. Did you make the fence railing?

A. I framed it.

Q. Was that well executed, and with good materials?

A. It was.

Q. Do you know Thomas Meacock?

Cross-examined by Mr. Marryat.

Q. You are one of Mr. Mackell's journeyman?

A. Yes.

Q. You were employed to make that part of the railing which he was to supply?

A. Yes.

Q. Of course, your work was better than the other?

A. That is plain to be seen.

Q. I believe, when you came to fix your work, you found a little difficulty in making it square with Lord Carrington's railing?

A. Lord Carrington's work was obliged to be altered.

Q. Who

Q. Who made Lord Carrington's railing?

A. I do not know.

Q. Do you know Mr. Tucker?—A. Yes.

Q. But he is not so good a workman as you.

A. I cannot say that.

Q. Do not you know that he is as good a workman as any in London?

A. I do not know that.

Q. Will you swear he is not so good a workman as you?

A. I do not know.

Q. Who was the iron merchant that supplied Mr. Mackell with this iron?

A. Mr. Parks of St. Giles's.

Q. The iron of which it was all made?

A. Yes.

Q. Do you know how much a ton he gave for it?—A. No.

Q. I can tell you, because he has told us, it was twenty pound a ton. Do not you know that was what he gave for the iron?

A. I do not know.

John Downing sworn.

Examined by Mr. Best.

Q. Were you employed about this work, in the Green-Park?—A. I was.

Q. Was it well executed?—A. It was.

Q. Was any part of it made of old iron?

A. None

A. None of it.

Q. Do you know whether all the old iron you found upon the place, belonging to Lord Romney; was accounted for?

Mr. Gibbs. That must be proved by the bill.

Mr. Best. Was there any old iron to account for?

A. No.

Q. In what manner was this work done?

A. It made twenty-three of the bars good at the bottom; they were not proper to be rivetted without.

Q. You are now speaking of Lord Carrington's; are you?

A. I know nothing about that.

Q. How was the other part fixed for the other noblemen?

A. It was fixed upon a kirb.

Q. Was it very well done?—A. It was.

Q. Are you a judge of what is a fair charge for it?—A. I am not.

James Elliot sworn.

Examined by Mr. Law.

Q. You are a foreman, I believe, of Mr. MacBell's?—A. Yes.

Q. Did you do any part of this work?

A. Yes.

Q. Explain what difference there is in point of trouble, and, of course, what right there is to charge

charge more for work on a hanging level, than in the common way?

A. There is a great deal more trouble; every bevil is to be all set out on boards; and rails a-square is not required to be chalked out.

Q. How much in the pound do you think you are entitled to charge more for work done where the spikes, and all this, is upon a hanging level, than upon a common level?

A. I am no judge of charges.

Q. Does it require a greater number of heats?

A. It does. I always understood this work to be contracted for so much a foot, and never took any account of it.

Q. Do you know whether the charge Mr. Mackell made upon this occasion is the usual charge he makes to other people for similar work?

A. Yes.

Lord Kenyon. You mean the original charge, before it was twice cut down by Mr. Wyatt?

Mr. Daw. Mr. Wyatt did that, he said, for peace sake.

Lord Kenyon. Not his first deduction.

Mr. Erskine. The charge we make upon this defendant is, that he alleges Mr. Wyatt has allowed Mr. Mackell between sixty and seventy per cent. after he has made the deduction.

Lord Kenyon. This is not an action for a libel upon Mr. Wyatt; the only question is, whether the defendant wantonly made an improper charge, or fairly

fairly and ingenuously gave his opinion to his employer. How many advertisements do we see, of different companies of wine-merchants, &c. the Sea-Coal Company, among others, that they sell cheaper than their neighbours! God forbid that should be a libel; all the world would be up in arms.

Mr. Erskine. The charge is, that after the deduction is made by Mr. Wyatt, Mr. Mackell has a profit of between sixty and seventy per cent.

James Elliot.

Cross-examined by Mr. Mingay.

Q. Did you take notice of the work in Lord Carrington's railing?—A. I did.

Q. I believe it did not properly range with your work?

A. I believe not.

Q. It was taken down in order to make it range properly?—A. Yes.

Q. But whether the work is as good, or worse, you cannot tell? It is not so good as Mr. Mackell's, is it?—A. No.

Lord Kenyon. Was the only reason why Lord Carrington's railing was taken down, because it did not justly range with the other railing?

A. It might be so; I had no hand in fixing it.

Mr. Mingay. Which was put up first, Lord Carrington's or Mr. Mackell's?

A. I cannot tell which.

Q. It

Q. It did not range properly, and then Lord Carrington's was taken down, to make it range right?

A. I cannot say: I had no hand in fixing it.

Q. Do you know of any other reason for Lord Carrington's railing being taken down?

A. I know no reason about it.

Q. You know it was because it did not range right.

A. I do not know that.

Q. You said so just now.

A. Perhaps it might.

Mr. Erskine. I wish to call Mr. Wapshott again.

Mr. Wapshott called again

Examined by Mr. Erskine.

Q. Do you know the railing on each side the park-gate on Constitution-Hill?

A. I went and examined that railing which was done by Mr. Hanson. I made an estimate of that also.

Q. Which work is of the most value?

A. I measured that.

Q. That is upon an even kirb, is it not?

A. It is.

Q. What difference do you find, upon your calculation, between the two?

K 2

A. Upon

A. Upon my calculation from measurement, I took it at eighty pound-weight per foot; I valued that eighty pound at twopence halfpenny per pound for the iron, as I did that of Mr. Mackell's; I valued the workmanship of that at one penny per pound, and for this reason, a foot of that weighs nearly double what Mr. Mackell's railing does, Mr. Mackell's weighing forty-two, that weighing eighty; in consequence of which, the workmen will make two hundred weight of that, and better, in the time they will make a hundred weight of Mr. Mackell's; in consequence of which, I allowed, for coals, tools, shop-rent, and waste, as I did for Mr. Mackell's; I allowed two shillings and eight-pence in the foot, and for this reason, because the iron is larger, and consumes a few more coals in the manufacturing it; therefore I put twopence a pound more a foot upon the coals, and, upon that estimation, this comes to one pound six shilling; taking that at sixpence per pound, it is forty shillings for the foot; subtracting the one pound six from the forty shillings, it makes the profit of that work fourteen shillings per foot run.

Q. If you had Mr. Mackell's work to do in the Green-Park, and the work done by Mr. Hanson on Constitution-Hill, would you do the one for sixpence a pound, as soon as you would do the other for sevenpence?

A. I

A. I would sooner do this, which weighs so great a weight, at fivepence farthing, than the other for sevenpence; and for this reason—upon the top rail of Mr. Mackell's, there is what we call the short spikes, in consequence of which, between every hole the palisadoes are to go through—

Mr. Mingay. It is not regular, after you have examined a witness, and he has been cross-examined and re-examined, to call him up again at the end of the cause, to prove another head of evidence.

Mr. Erskine. How is it possible to go through a cause of this nature, if we are to jumble it all together? We must go into different heads of evidence.—I ask you, whether you would do this work on Constitution-Hill for fivepence halfpenny, or fivepence farthing a pound, rather than do this railing of Mackell's for sevenpence?

A. I surely would.

Q. What are your reasons?

A. This is very stout iron, and the lengths are very long, the uprights are. There are no short spikes upon the top rail; in consequence of which, there are no holes punched upon the top bar, between the holes that are to receive the palisadoes, and which makes a material difference; because the iron must go into the fire every time, to punch one of these holes, and you must put the iron into the fire to spike on these short spikes, not above

three inches long ; then they are to take up the iron with the tongs, to square it upon the rail, to make it in a good workman-like manner. This is not wanted upon Mr. Hanson's spikes, because there are no short spikes there. In Mr. Mackell's there are : There are so many holes more to punch, by taking the short spike-bars.

Q. Will you take upon you, upon your oath, to say, that that makes the difference, finally, of between fivepence farthing, and sevenpence a pound?

A. Yes ; that the one at fivepence farthing runs equal with the other at sevenpence.

Mr. Wapshott.

Cross-examined by Mr. Gibbs.

Q. You were an indifferent man. You went to the arbitration merely as an indifferent man, to have justice done?—A. Yes.

Q. Mr. Mackell desired you to go and examine this work on Constitution-Hill, did he not?

A. I was desired by some others of the trade, to go and examine it.

Q. Then the trade make this a common cause?

Mr. Wapshott. Will you hear the cause why I went to examine it?

Mr.

Mr. Gibbs. You went to view this work of Mr. Hanson's at Constitution-Hill, at the desire of several of the trade?—*A.* Yes.

Q. Those persons of the trade were desirous, were they not? that Mr. Mackell's charges should not be beat down by Mr Hanson?

A. I do not know what their desire might be in that respect.

Q. Now I will put it to you plainly, and see whether you will stick to it: that you do not know that it was the desire of those persons in the trade, who sent you to examine this work, to prevent Mr. Mackell's bill from being beat down?

Mr Wapshott. I will answer you in this way—

Mr. Gibbs. One word, yes or no, will answer my question at once.

Lord Kenyon. Answer the question without a preface.

Mr. Wapshott. Please to repeat the question.

Mr. Gibbs. Do not you know, that those gentlemen of the trade, who desired you to go and examine this work of Mr. Hanson's on Constitution-Hill, wished to prevent Mr. Mackell's bill being reduced?

A. I cannot take upon me to say they wished it not to be reduced: The motive of my going to view that work was this; I was told that the trial was coming on concerning the last publication.

Q. Who desired you to go? give us their names?

A. Mr. Rawlinson desired me to go.

Q. Who besides?

A. I believe Mr. Fortune was another.

Q. Did not Mr. Mackell himself desire you to go?—Come, out with it.

A. I believe he did.

Lord Kenyon. Did Mr. Messenger desire you to go?

A. I do not recollect that he did. Mr. Messenger was there—not that he asked me to go—the two men are quite indifferent to me. I only went to speak truth in favour of justice, and I do not wish to enhance the price of the trade.

Lord Kenyon. I wish you would answer the question, and not give us a lecture upon your morals.

Mr. Gibbs. I take for granted, as you were going to look at Mr. Hanson's work, and value it, that you thought it just and fair to give notice to Mr. Hanson of your intention to examine the work, that he might attend to see you did it fairly?

A. Mr. Hanson might just as well have given me notice when he went to examine Mr. Mackell's work.

Q. Then in truth you did not give any notice to Mr. Hanson, but all this was done by you and Messenger behind Mr. Hanson's back?

A. I ask your pardon—

Q. Then he was present, was he?

A. I went

A. I went with some more of the trade, for this reason—supposing that this question, when the trial was bringing to issue, might be asked, that I might be able to speak to the value of the work—and had it turned out so, that these questions had been put to me of the value of the work, and I was not able to give the information what would be thought of me?

Q. Probably you knew before you went there that Mr. Hanson had stated in his book, that Mr. Mackell's estimate for doing this work was three hundred and fifty-six pounds, and his (Mr. Hanson's) only two hundred and forty-two pounds, eighteen shillings?

Mr. Wapshott. It is a different work. What you are speaking upon, I take it, is the gate and the pilasters.

Q. The railing and the gates?

A. I had nothing to do with the gates.

Q. I will tell you how the estimates were given in; Mr. Mackell's estimate was sixpence per pound for the ends, and so was Mr. Hanson's; but Mr. Mackell's estimate for the gates was thirteen pence a pound, and Mr. Hanson's only eight pence!

A. That I know nothing about; this was an estimate I suppose put in—

Q. Yes; and you suppose it was put in for the purpose of prejudicing this cause?—A. Yes.

Q. If a man had thirteen pence per pound for the gates, could not he afford to make the two ends for

for sixpence per pound, better than a man who had only eight pence per pound for the gates could afford to make them for sixpence?

A. In respect to the gates and pilasters, I know nothing of their contracts, nor was I ever asked to look at them, or set any value upon them.

Q. I will put it in another way, because I see you have a vast objection to giving a direct answer.— Suppose a man has to make iron gates and some iron railing by the side of them, I imagine that the more he has for the gate, the cheaper he can afford to make the railing by the side of it?

A. That depends upon circumstances.

Q. Not at all: how can it depend upon circumstances?

A. The consequence is that many people do give in estimates, and possibly they find a mistake after they have given in that estimate.

Q. But I will have an answer to my question. I want to know whether, if a man has a gate to make, and side railing to make, whether, if he has a high price for the gate, he cannot afford the side railing at less? The more profit he has upon one, the better he can afford to take a small profit upon the other?

A. That is not the course of trade. It is a thing I am unacquainted with; but however you may wish to entangle me, I will give an answer to the question.

Q. Is

Q. Is it not true, that the larger price a man has for the gates, in the case I put, the less price he can afford to make the side railing for?

A. If he has a fair price for the gates he can afford to make the railing for no less than a fair price.—Am I to suppose upon my oath?—

One of the Jury. Why did you suppose it would be more likely you would be questioned as to the value of the work of the railing than as to the value of the work of the gates? and why, when you were viewing the whole job together, did not you make the same observation upon the gates as upon the railing?

A. I was only asked to look at the railing?

Juryman. If this examination had been made for the purpose of throwing a light upon the real justice of the case, the whole of the job would have been estimated together. If a party is sent to make an examination of a job on a large scale, he should make an examination of the whole job together.

Lord Kenyon. Did you ever converse with Mr. Messenger upon this subject?

Mr. Wapshott. Does your lordship mean upon the railing?

Lord Kenyon. Had you any conversation with him respecting the subject matter of this cause, or about this cause?

A. With Mr. Messenger I have had some conversation.

Lord

Lord Kenyon. Did he ever say to you what he said now when he gave his evidence—that they were angry that the defendant tried to beat down the prices?

A. I never heard such a thing from him nor from any other of the trade, I say that positively.

Lord Kenyon. Mr. Erskine, had not you better withdraw a juror?

Mr. Erskine. I shall put myself entirely under your lordship's directions.

Mr. Mingay. I think we have attained the object, and if Mr. Hanson has had his ears and understanding, as much awake as every body here has, he ought to submit to what your lordship suggests.

Mr. Erskine. Your lordship has heard all that has passed; whatever you think is proper to be done under these circumstances, I shall certainly advise my client to do.

Mr. Hanson. My lord, my character has been extremely injured; I would rather it should go on, if your lordship will give me leave.

Lord Kenyon. If you please.

Mr. Hanson. I thank your lordship.

Mr. Erskine. I beg it may be remembered that we acquiesce in your lordship's proposal.

Lord Kenyon. It will have no influence at all upon the cause.

Mr. Mingay. I am sure your lordship will feel no prejudice.

Lord Kenyon. Not in the least.

Mr.

Mr. Cotterell sworn.

Examined by Mr. Garrow.

Q. Were you the painter who was employed to do the work?—**A.** Yes.

One of the Jury. Mr. Garrow, I conceive you have proved already that your work was very well done.

Another Juryman. Your question seems confined to twenty-five shillings for the iron work.

Mr. Garrow. In order to shew the propriety of the estimate, we are now going to shew that Mr. Mackell was allowed only one shilling and eightpence for articles for which he paid two shillings and eightpence.

Juryman. The question before the court, as far as I am able to understand it, is upon the justice of the charge of twenty-five shillings a foot; every thing else seems agreed.

Mr. Erskine. There are several other justifications in the plea which the defendant must make out; and he must prove that Mr. Mackell made between sixty and seventy per cent. profit.

Mr. Garrow. We shall shew there cannot be sixty or seventy per cent. profit upon that for which they allow one shilling and eightpence, for which we paid two shillings and eightpence.

Q. Did you do the painting work of these rails?

A. Yes.

Q. Who paid you for it?—**A.** Mr. Mackell.

Q. Were you paid by the foot?

A. By

A. By the foot run.

Q. What did you charge for it?

A. I charged thirteen pence for front railing, and sevenpence a foot for the cross railing.

Q. And that was paid you by Mr. Mackell?

A. Yes, in February, 1797.

Stutely sworn.

Examined by Mr. Best.

Q. Did you do the bricklayers work to the railing in the Green-Park, for Mr. Mackell?—A. Yes.

Q. What did you charge him for it?

A. Sixpence a foot.

Q. Were you paid that sum?

A. I was by Mr. Mackell.

Saunders sworn.

Examined by Mr. Law.

Q. How much a foot were you paid for the stone work?

A. One shilling and fourpence a foot for the front railing, and one shilling and twopence for the cross railing.

Mr. Erskine. In their calculation they allow eighteenpence for all this.

The end of the evidence for the plaintiff.

One of the Jury. There does not seem to be any charge against the defendant in this book of the using old iron or any thing of that sort; that was all in the former pamphlet.

MR.

MR. MINGAY.

May it please your Lordship, and Gentlemen of the Jury,

YOU may be perfectly assured that, though I owe a very important duty to my client, yet that I feel there is a still more important duty cast upon me with respect to *the public*: as every man will in future have an opportunity of deriving benefit from the decision of this cause; from the manner in which the topics have been discussed; and the evidence of the witnesses who have been *obliged*, upon their oaths, to tell *you*, and *the public*, how they conduct themselves upon *these occasions*: and therefore a much more important duty is cast upon me than even as counsel for Mr. Hanson. I profess, unless I have no understanding to comprehend this case, or in the feebleness of my understanding, have understood it improperly and incorrectly, I do not think I shall be called upon to trouble you with any evidence upon the part of the defendant. But if, in the course of my address to you, I should have occasion to alter my opinion by any thing suggested to me by my own understanding, such

as

as it is,—or from any observation which I may collect from the manner in which my remarks seem to make way with you, I can and will call witnesses to satisfy you *upon every point*—I shall be able to satisfy you of my client's *justification*, and I am perfectly sure it will be very much to your satisfaction that I am able to do so.

Before I proceed to defend my client from the charge that has been made against him, *in evidence and in statement*, I must take the liberty of calling your attention to what is *the only charge* to which I am called upon to make any defence. My learned friend, Mr. Erskine, who, upon all occasions, opens his case for his client most ably, most eloquently, and most advantageously, stated to you those charges which my client, in *the pamphlet originally published*, was *necessitated* to make in justification of himself: for you will be so good as to see how he came into this business, in what character he has acted throughout, and that he could have no earthly purpose but to maintain his own opinion, and to shew the honourable persons who employed him, that he had acted fairly: and if, in consequence of acting as his duty obliged him to act, he was under the necessity of beating down the *fraudulent and scandalous charges* which had been made, he was not to be blamed. When attacked he was bound to vindicate his own character; But *that pamphlet which he first published*
has

has nothing upon earth to do with this cause. The whole charge against the defendant is this—that *he has published a libel upon the plaintiff in one paragraph out of five hundred contained in this pamphlet, which I hold in my hand, (the second pamphlet) and not that which I have thrown aside because it has nothing to do with the cause before you.* The alligation he has made, if it reflects upon any body, reflects only upon the character of *Mr. James Wyatt*, and not upon the character of *Mr. Mackell*, who is the plaintiff in the cause: so that this defendant, supposing he had that malice, which I deny, supposing he had those mean, interested, and therefore despicable motives, imputed to him, all which, on his behalf, I deny in his presence, and in his name,—if he had them it has nothing to do in *this* enquiry. *Mr. Wyatt* is not the plaintiff in this cause, but *a witness*: and what sort of witness your own observations will anticipate: your own integrity will anticipate: your own experiences in the world will anticipate, infinitely better than any observations which will fall from me in the course of my address to you upon the evidence given by *Mr. Wyatt*, who was *the arbitrator*, and therefore ought to have been the *impartial judge*.

That the history of this business is brought to light, is, I think, most fortunate for the public: It shews that there are combinations in other parts of the world, as well as upon *Hounslow-Heath*, and

Finchley Common: That there are people who get your money by extortion, without such risks as those men run who get money out of your pockets by night, with a pistol at your head; that there are ways of obtaining money, and that too without hazard, which no honest man can possibly justify, and which no practice can sanction. No combination of tradesmen, in that or any other line, can possibly bring down judgement upon *Mr. Hanson*, from an observing and intelligent jury, upon such evidence as you have heard, and upon such evidence as you shall hear, if it becomes necessary; and which will prove that this attempt is no other than *a combination to extort, where gentlemen will submit to be imposed upon.*

You have heard the history of this business from *Mr. Erskine*: We cannot differ in the history of it; but on *the manner* in which the business was conducted on the part of *Mr. Mackell*, by *his arbitrator and his friend*, *Mr. Wyatt*—for he has recommended him on many occasions—some observations must necessarily be made by me.

His Majesty having been graciously pleased to grant out part of *St. James's Park* to certain honourable persons, some of whom are in your presence at this moment, they made in the *Green-Park* a beautiful arrangement, which is extremely comfortable and pleasant to themselves, and must be extremely gratifying to all who look at it, as they

they have certainly greatly improved that spot. Mr. Mackell was the person employed by all these noble persons but one; and *one fact* is worth a million of arguments, and that is, the fact which I am about to state. With the exception of *Lord Carrington*, whose work was done by another man, who is in court, and will tell you that *his work is as good; his materials as good*; that he went to the same market to buy his iron, and bought it as cheap as he could (which he was bound to do, if he did not mean to impose upon his employer) and that *Lord Carrington's work* was done at the price of *twenty shillings per foot*. Then they endeavoured artfully to run it down—"ah! but it was forced to be taken down again".—So it was—because it was the railing *put up first*; and when the other came to range with it, the workmen put their's up in such a manner *that they did not range well, and this was taken down again*; not because the work was badly done, but because it did not range properly: but I will prove by Mr. Tucker, who did the work, that it was made of the best materials, that it was done in such a manner that no man ever complained of it. Has any witness ventured to say that the work was ill done? or is there a witness in court to shew that the work was ill done? No, there is not a syllable of complaint about the work; and when Mr. Tucker carried in his bill, it was paid without a murmur. I choose thus to separate the cause in such a manner as I think will render it intelligible to you all.

The question certainly is, whether one pound five shillings per foot, or one pound, is the sum which an honest man ought to charge for this railing. I will shew satisfactorily that Lord Carrington's railing was done at sixty, nay, at near four score per cent. less than Mr. Mackell had the modesty to charge for the same work, and Mr. Wyatt the honesty (or any other name you choose to bestow upon it) to pass as a fair bill.

The noblemen, when Mr. Mackell's bills were delivered in, murmured. One of my friends put a question, whether there was any thing charged per cent. on account of *the length of credit* to be allowed? There was no insinuation *in evidence* that there was a doubt of *the immediate payment* of the bills, and that therefore the charges ought to be higher. I have heard no evidence that Mr. Mackell ought to put upon the work this or that price, because there was to be a longer credit upon it; and I have a right to say, that the bills delivered in by Mr. Mackell, ought to have been honest, just bills, allowing *a fair and reasonable profit*; and such as Mr. Mackell would have made even to a man of his own line of business. He ought not to avail himself of the probable negligence; he ought not to avail himself of the indifference; he ought not to avail himself of the carelessness, as to the charge of these persons whose stations and fortunes would probably have rendered them more open

open to imposition than any others. I say, it is the *duty* of every tradesman to have but one mode of *charging*. He ought not to charge more to a peer than to a cobbler. If a tradesman does not conduct himself as an honest man, but is to vary his charge according to the opportunity afforded of imposition, or according to the degree of rank and fortune of his employer, where is it to end? A baron is to be charged a little more than a commoner;—a viscount a little more than a baron; an earl more than a viscount; and so on, to a duke; and so there will be an *HANGING-LEVEL* of imposition. I say here, that there is nothing for you to enquire into but to take for your first principle that which the moment you were educated you possessed, and from which none of you, I dare say, have departed in any thing you have done in your lives — That “*honesty is the best policy*.” If any other policy is practised in trade, it is a disgrace to the name of trade, and should receive no sanction any where, much less in the walls of the *Guildhall* of this city; where every man supposes that *good faith* is the basis of all transactions—and where my lord’s time and your’s, day by day, in winter and in summer, is spent in trying to bind men down to the *practice* of honesty: and *this* is one of the instances in which a jury at Guildhall will give *their* sanction to that good old maxim, “*that honesty is the best policy*,” and that he who endeavours to outstep that rule shall outstep it *at his own cost*.

When this matter became the subject of dispute; Mr. Hanson received a letter from the noble Marquis of Salisbury, now sitting on the right hand of his lordship, desiring him to look over the bill, and say *whether it was a reasonable charge*. Mr. Hanson looked it over; he found it a pledge of honour to the Marquis of Salisbury,—he found it a pledge of honour to Lord Romney, he found it a pledge of honour to every man that consulted him; *he did not thrust himself in, officiously, he did not thrust himself forward as the partisan of one side or the other*. One of the arbitrators (*Mr. Brodie*) will take home a little advice, which I will venture to give at the hazard of my own honour if I am wrong: if he should happen to be an arbitrator in future, to take care that he conducts himself in a different manner than he appears *upon his own evidence* to have conducted himself upon this business. Mr. Hanson, when he was called upon to give his opinion, said the charge was too great: The noble persons to whom those bills had been delivered, feeling an objection at first, that they were too exorbitant, when they found Mr. Hanson concurred in that opinion, could do no less than set an enquiry on foot, in order to have it ascertained whether they were to submit to this *gross and scandalous imposition*; for even upon *Mr. Wyatt's shewing it is a gross and scandalous imposition*. I have his testimony to prove that; he has done enough to let me know that if he could have crammed these exorbitant

orbitant bills down the throats of these noble persons, in his *first* award, he was ready to do it; but when the evidence stared him in the face, and when every man that ran could read, that it was an imposition, then he lets in a little deduction more;—but far short of what is the truth and justice of the case. There Mr. Hanson ceases: he has nothing more to do with it—it is *referred to Mr. Brodie and Mr. Jackson*. Mr. Brodie was Mr. Mackell's arbitrator. Well! what sort of arbitrator is *he*? he is the friend of Mr. Mackell; he is a countryman of his: Not that his having come far north is any objection to him, except that having naturally a keener understanding, he has been able to mature it in the south. He had a desire that Mr. Mackell *should get all he could*.

Has this arbitrator told you he has made any enquiries? Has this arbitrator told you he has heard any evidence? Has this arbitrator told you *when* he made up his mind to give Mr. Mackell the amount of *his whole bill in the lump*? No! he tells you he thinks it a *fair charge*—that he, the man who is an arbitrator in the same line of trade, to whom it was referred to do justice between the parties, who ought not to have had any inclination on one side or the other, who ought to have had no guide but *honesty, truth, and justice*; no impulses but those which honour suggested; he, *in the lump, gives Mr. Mackell every farthing he asks*. But had he no

Evidence the other way? Oh, yes; Mr. Hanson was examined; he stated the facts upon which he had grounded his opinion, in calculating the value of the work; and Mr. Jackson, not coming so far north, would not join with Mr. Brodie—if he had, *Mr. Wyatt could never have been the umpire*:—but in consequence of their differing—then comes *Mr. Wyatt, the umpire*: and how does he conduct himself? Gentlemen of the jury! this lesson, I hope, will be rung into the ears and hearts of every man who hears this cause: that *this is not the way for persons to conduct themselves as ARBITRATORS. As arbitrators they are judges, not parties.* We might be called upon to tell ignorant men, men in low and obscure situations in life, that they are to settle differences between their neighbours *with justice and impartiality*—but are we to say so to a man in the situation of Mr. Wyatt? a man who ranks high in a liberal profession? who is *a surveyor* employed upon various occasions, as stated in my brief? That *such* a man should, in the face of the public, tell my lord, and you, upon his oath, that he decided upon the slight evidence he had, when he made his *first* award; but I will take it either way, when he made his first award, he either had, or had not, gone far enough into the enquiry, to see what the case was, to determine fairly between the parties, and fairly to draw the line between them. If he *did not* take the means of informing himself, he made a dishonest award; and no man

man can gain say that proposition. If he *did* inform himself, how came he afterwards to make *another* award, *differing so much from the first?* In the *first* award, *without having any fair or competent opportunity of judging;* without using those means which *an arbitrator* ought to use, he makes *an award;* and, out of the sum of *two thousand four hundred and twenty-seven pounds sixteen shillings and sevenpence*, deducts *sixty four pounds eighteen shillings and threepence*, a deduction that was *contemptible, ridiculous, colourable, and insulting.*

The moment this award was communicated to the noble persons who were to be imposed upon by it, (for I insist upon it, the object was to impose upon them; I feel it in that light, and cannot help expressing it so,) a meeting was held at Lord Malden's, (now Lord Essex,) where all the noble persons attended. The parties were all heard: Mr. Wyatt's first award was given up in a moment. Mr. Mackell did not insist upon standing by *that* award; and there was a resolution entered into, signed by Lord Malden, as the representative of the whole body, as chairman of the meeting; that Mr. Wyatt should reconsider the case, and make a second award, which, by the bye, was not a very great compliment to a man who *professed* to have considered the case, and to have made his award. I think the course should have been, to have

have considered this case *before* he had made his first award ; and not have omitted to consider it till he was called upon, by the parties who had submitted it to him, to make a second award.

The second award shews, either that he had not obtained the intelligence when he made the first award, upon which *that* award ought to have been founded ; or it shews, that he would have imposed upon those noblemen, if he could ; for, in my Lord Romney's bill, and others, he takes off, in the *second*, many pounds per cent. in different proportions. Taking *all these circumstances*, correctly, *where is the malice of Mr. Hanson?* One should be apt to suppose, from what has passed to day, that we were here trying an action for work and labour done by Mr. Mackell, and that the question was, whether the charge made by Mr. Mackell, and sanctioned by Mr. Wyat, Mr. Brodie, or any of that party, or the charge made by Mr. Hanson, ought to prevail. That is *not* the cause. *The complaint here against Mr. Hanson is for maliciously, calumniously, and scandalously, wounding the character of Mr. Mackell.*

But, gentlemen, there is a fatal objection to the pleadings, suggested to me at this moment. I meant to have referred to the declaration for another purpose. The only difference will be, whether you give me your verdict in five minutes, or the plaintiff be nonsuited.

Mr. Gibbs. In every count of the declaration they state, that they delivered in bills, containing reasonable demands.

Lord Kenyon. Is that alleged in all the counts?

Mr. Gibbs. It is; I have been looking into them.

Mr. Best. And that is stated in the pamphlet.

Lord Kenyon. The pamphlet does not allow that he gave in reasonable bills; the whole of the pamphlet is to gainsay that.

Mr. Law. The pamphlet states the bills, and we have proved the charges to be reasonable.

Lord Kenyon. At present you have proved they were reasonable bills by only one witness, by Brodie.

Mr. Erskine. I submit we have proved, by all the smiths, and all the surveyors, that they were reasonable.

Lord Kenyon. I think that stands upon the single testimony of Mr. Brodie.

Mr. Gibbs. The allegation is, that "he delivered in his bills, containing therein certain reasonable charges made, and prices demanded, by the said plaintiff, for the doing of such work." We must have the bills, to see what the charges are, and my friends must prove that they are reasonable.

Mr. Erskine. We have proved that they are reasonable.

Mr. Gibbs. Mr. Mingay must see the bills; he wants to observe upon them.

Lord Kenyon. You must produce the bills.

Mr.

Mr. Erskine. The pamphlet admits that we delivered in bills. We have proved, by our parol evidence, that those bills are reasonable.

Mr. Mingay. In the pamphlet we take the charges to be sevenpence; but, in truth, the bills charged eightpence a pound.

Lord Kenyon. You must have the bills.

Mr. Erskine. The bills were delivered in to third persons.

Lord Kenyon. So they may have been, and you know by every day's experience, (if your good sense had not informed you without experience,) that in hundreds of instances, a plaintiff must produce evidence which is in the hands of third persons. I think it is necessary, in a special action on the case, if that is an allegation in the declaration, that the bills should be produced.

Mr. Best. This allegation is, that Mr. Wyatt made a reasonable award.

Lord Kenyon. You must produce the bills, and let me try the justice of them. How can I tell the gentlemen of the jury, that the allegations in the declaration are proved, when one of these allegations is, that bills were delivered that are reasonable bills.

Mr. Erskine. There is this passage in the pamphlet, page 22: "In Mr. Mackell's original bills, one thousand two hundred and sixty-six feet of front railing was charged at one pound eight shillings and sixpence per foot, and seven hundred and six

fix feet of side-railing, at sixteen shillings and sixpence per foot, amounting to the sum of two thousand three hundred and eighty-six pound ten shillings; this, including stone-work, brick-work, lead, fixing, and painting, which, according to separate accounts, transmitted by Mr. Mackell to Mr. Jackson, was near three shillings and twopence per foot, the whole amount being nearly three hundred and twelve pounds."

Lord Kenyon. Now that does not agree with any one of the columns in this printed bill.

Mr. Erskine. Here is an admission of this gentleman (the defendant) that Mr. Mackell delivered in original bills, therefore I cannot be called upon to produce the bills, in order to prove that he delivered them in. It only remains to see whether these bills are reasonable: Mr. Wyatt proves they are reasonable, and Mr. Brodie considers them as reasonable, and all the smiths examined in the cause.

Lord Kenyon. But must not I see the bills?

Mr. Gibbs. It is alleged, "that the said John Mackell had done work as a smith for certain customers,"—not of any one,—"that he had done work as a smith for certain customers of him the said John Mackell, and had delivered to those customers his bills for the performance of such works, which said bills had been settled, and the charges and prices in the same bills contained, had been ascertained, and allowed by the said James Wyatt."

I am sure that cannot be proved without producing the bills.

Lord Kenyon. That is not true, in fact.

Mr. Mingay. No; Mr. Wyatt disallowed them.

Mr. Law. That such charges as were reasonable had been allowed.

Mr. Gibbs. "The charges and prices, in the same bills contained, had been ascertained and allowed by the said James Wyatt, on behalf of the said plaintiff, and of those last-mentioned customers respectively, by which ascertainment and allowance, the said James Wyatt had allowed the said plaintiff only such charges and prices as were fair, reasonable, and usually paid to smiths for such work, and which prices and charges, so allowed, afforded to the said plaintiff, much less than between sixty and seventy per cent. profit."

Mr. Law. That is proved by Mr. Wyatt.

Lord Kenyon. Indeed it is not.

Mr. Erskine. Your Lordship will find, in the pamphlet, Mr. Hanson, speaking of the first reference, says, "By Mr. Jackson's calculation of the prime cost of the railing, in consequence of these bills delivered, he allowed Mr. Mackell the liberal profit of ten per cent. on all the materials. Mr. Jackson agreed to allow Mr. Mackell, either sixpence per pound, or twenty shillings per foot for the front railing, and eightpence per pound, or ten shillings per foot for the side railing."

Lord

Lord Kenyon. That is starting other game. In a special action upon the case, nothing is clearer, than that all the allegations a party chooses to put in his declaration must be proved. It has been said, that great lawyer, Mr. Wallace, used always to strike out every thing that was not material; because he knew, that if any thing was inserted that was not material, it often tripped up the heels of the plaintiff.

Mr. Best. The charge upon that count is, that the work was done for these persons; that for that work the bills were delivered; that the bills were referred to Mr. Wyatt; and that he allowed to the plaintiff only such charges and prices as were fair and reasonable. First, Is the work done? I conceive that has been proved: Next, Have any bills been delivered? There is this passage in this pamphlet: "The work having been completed, and bills sent to each of the parties." The pamphlet then goes on to state these bills being referred to Mr. Wyatt: That is proved by parol. Then, were the allowances made by Mr. Wyatt? I conceive that that could not be proved by the bills being laid before your Lordship; it can be collected only from the evidence of Mr. Wyatt, and the other persons: the declaration states, that such prices as were fair and reasonable in these bills, were allowed.

Mr Gibbs. Those are not the words.

Mr.

Mr. Law. Take the whole sentence together, the allowance is only of the reasonable charges.

Lord Kenyon. Do you understand, by this allegation in the declaration, that Mr. Wyatt allowed the whole of the bills?

Mr. Law. No; only such as were reasonable.

Lord Kenyon. The words are, "which said bills had been settled, and the charges and prices in the same had been ascertained and allowed." Now, have the charges been allowed by Mr. Wyatt?

Mr. Law. In what manner they had been ascertained and allowed, appears afterwards, when it says, he allowed only such as were fair and reasonable.

Lord Kenyon. This declaration imports, that Mr. Mackell had, in delivering these bills, acted fairly and honestly. Now, Mr. Wyatt has, by two operations, shewn these bills to be unfair and unreasonable.

Mr. Law. Then it says he had allowed such only as were fair and reasonable.

Lord Kenyon. By the first words in the allegation, it would have been necessary to prove, that the whole bills were allowed.

Mr. Law. I think the subsequent words qualify it.

Mr. Erskine. When I state that an arbitrator has ascertained and allowed my bill, I do not, *ex vi terminorum*, assert, that he allows the whole of my bill.

Lord

Lord Kenyon. I want to know whether the words of this declaration are satisfied, by giving proof that the bills were reduced by Mr. Wyatt?

Mr. Erskine. I apprehend the third count is no more than this, that the work was done; that being done, the bills were delivered. It then goes into a detail of those bills:—it then states the ascertainment by Mr. Wyatt; it states they were given in, and ascertained, and allowed; and that only such charges were allowed as were fair and reasonable.

Lord Kenyon. That the prices charged in the bills were ascertained and allowed by Mr. Wyatt. Now, was it so?

Mr. Erskine. The whole of the third count, taken together, as I read it, contains a plain averment, that the bills delivered in by Mr. Mackell, were delivered in for allowance and ascertainment; they were ascertained and allowed, and such charges only were allowed, as were reasonable.

Lord Kenyon. I think otherwise, and I will tell you why; according to my idea, the proper conduct of the person who sent in these bills would have been, to send in such bills as that no reduction could be made. If I am hereafter to learn, from this record what the conduct of Mr. Mackell has been, if a verdict should be given in his favour, I should conclude, from that verdict, on this record, that he delivered in bills, which Mr. Wyatt allow-

ed up to the extent of them. Now, that is not the truth of the case.

Mr. Gibbs. And our objection is double: First, That they have not proved the allegation; next, That they ought to have produced the bills.

Mr. Mingay. It is material for me to see the bills; for if he charges eightpence a pound, as I am informed, there is an end of the cause.

Lord Kenyon. Call the plaintiff.

The Plaintiff nonsuited.

Lord Kenyon. I should have remarked, upon some of the evidence that has been given in the cause,—I think it is very scandalous,—How, in God's name, are mankind deluded, when the more the person they employ as their surveyor cheats his employer, the more he enhances his own profits! It was a very sensible observation that was made by one of the gentlemen of the jury, that the more exorbitant the charge is which the surveyor allows, the more money he puts into his own pocket.

APPENDIX!

APPENDIX.

An Appeal to the Public, in Vindication of the Conduct of JOHN HANSON, in regard to the Prices charged by Mr. John Mackell, Smith, and allowed by James Wyatt, Esq. Architect, for the Iron Railing made by Mr. Mackell, for enclosing the Gardens in the Green-Park. With a Prefatory Address to the Marquis of Salisbury, and the Right Honourable Lord Romney. To which are added, Engravings of several illustrative Drawings. The whole intended to correct certain Misrepresentations on that Subject.

TO
THE MOST NOBLE
JAMES, MARQUIS OF SALISBURY

AND
THE RIGHT HONOURABLE
CHARLES, LORD ROMNEY.

MY LORDS,

WHEN your Lordships, who did me the honour, with some other noblemen and gentlemen, of attending, on my behalf, at my trial for an imputed libel against Mr. Wyatt and Mr.
M 2 Mackell,

Mackell, heard the verdict of NOT GUILTY, pronounced in my favour, by a jury of my countrymen, your Lordships would no doubt conclude that the subject would for ever be buried in silence, and your Lordships be no more troubled on the occasion. That I was perfectly satisfied with that decision your Lordships will readily suppose; for what could more effectually establish my innocence of the charge, than a verdict of acquittal? If, therefore, nothing subsequent to that verdict had occurred to my injury, there would have been no ground for the following Appeal, nor should I again have obtruded myself on the attention of your Lordships, or the Public.

Your Lordships will do me the justice to recollect, that my looking over Mr. Mackell's bills, and my examination and valuation of the work done by him for your Lordships, (from which circumstance the Prosecution originated,) was not a voluntary, impertinent, officious, interference on my part. *It was in strict obedience to your Lordships commands;* and I am anxious to prove, as I trust I shall in the sequel, that I acquitted myself with liberality and candour towards Mr. Mackell, and with integrity towards your Lordships.

Mr. Wyatt, who was appointed to be the umpire between your Lordships and Mr. Mackell, judged differently from me of the value of the work. Upon this, from various quarters, reflections arose, unfavourable to my character, and which affected me most unpleasantly. I printed a Statement of the Facts, conceiving myself under the necessity of doing so, to justify the opinion I had given on the value of the work, and to clear my character and reputation. At the close of that Statement, I inadvertently made use of one improper expression; and that, as your Lordships know,

was made the ground of A CRIMINAL PROSECUTION. I was indicted as a Libeller, at the King's suit. The nature of the prosecution precluded my introducing evidence of the truth of the various facts stated in my pamphlet. Nevertheless, upon the explanation which ensued at the trial, the noble and learned Judge directed a Verdict of Acquittal.

My Lords, I repeat it again, I was perfectly satisfied with the decision; and came out of Court in full possession of those serene and peaceful feelings which accompany conscious rectitude, and with the hope, that the vexations I had experienced from this unfortunate business were now come to a period. Had things rested here, I certainly would not have troubled your Lordships with any thing farther upon the subject. But how, my Lords, was I disappointed and astonished, at seeing, the next day, in almost all the public newspapers, a partial account of the trial, in which the circumstance of my acquittal was most artfully suppressed; and it was represented, that I had been indicted for a Libel against Mr. Mackell, "imputing to him exorbitant charges, and using old iron, and charging for new;" and against Mr. Wyatt, "imputing to him a perversion of justice;" that the learned Judge signified his disapprobation of several parts of the said Libel, and that the Prosecutors accepted of an Apology, which went to justify their characters; which was stated to be the sole object of the prosecution.

Had the Misrepresentation been the effect of accident, had it proceeded from the carelessness or inaccuracy of newspaper reporters, I should have had less reason to complain; but the *Advertisement* I allude to (for so I must call it) appeared in several of the newspapers on the same day, in the very same

words; and, on inquiry, I found that the insertion of it had been paid for at the offices of all those newspapers in which it appeared. Nay, so very industrious was some person to prevent any other than such garbled account from getting into circulation, that, on the morrow after the trial, *a more correct and impartial account having appeared in the Morning Advertiser, inserted by the Editor himself, from his own sources of information*, in which it was stated, that the Jury, with the approbation of Lord Kenyon, found me NOT GUILTY, some one applied at the office of that Paper to get the same uncandid and partial account inserted, and *paid* likewise for that insertion.

I appeal to your Lordships, who condescended voluntarily to appear in Court in my favour, whether the noble Judge did not, upon reading my Pamphlet, observe to Mr. Erskine, the leading Counsel employed against me, that "it appeared" to him to be a mere statement of the facts upon "which I had grounded my opinion in calculating the value of the work," and ask the Counsel, "what were the objectionable parts?" and whether the Counsel did not refer his Lordship solely to the last sentence, which I avoid repeating here, lest I should be guilty of a republication of what had before given offence.

What I complain of, my Lords, and what now forces me to this Appeal, is, that the above advertisement placed me before the Public as indicted for a Libel, and concealed the **ALL-IMPORTANT CIRCUMSTANCE OF MY ACQUITTAL**; by which means the Public were left to suppose that I had merited the odium and reproach involved in a criminal prosecution.

What aggravates the injustice of the proceeding is, the total disregard of the stipulation made in
Court

Court by my Counsel, and assented to by those of the Prosecutors, previously to my signing the Explanation agreed on, namely, "that no improper use should be made of it." Is it possible, my Lords, for a man, feeling, as I do, innocent of the offence imputed to me in the indictment, and proud that I was declared so by a special Jury, to submit tamely to such a conclusion, or inference, and not desire to do, what every injured man has a right to do, appeal to an impartial Public? My Lords, the injury I complain of is not IDEAL. The expence of near 200*l.* which I was put to in defending the prosecution, (for, though acquitted of the Libel, yet, in an indictment at the King's suit, each party pays his own costs;) that expence, I say, is the least part of the injury I have sustained. The effects of the above advertisement have been such as might be expected. Abuse has, in consequence, poured upon me from all quarters. One person accosted me in the most opprobrious language, the day after the trial, called me scoundrel, and said I had been obliged to beg pardon, in open Court, for my infamous Libel against Mr. Wyatt, adding, that I had been found guilty of the Libel, and that it was in all the public newspapers.

My Lords, I have suffered the like ill-treatment from many other persons, who evidently obtained their information in the same way. A gentleman of unquestionable veracity told me he heard it said, in a stage-coach, "that I had written the pamphlet against Mr. Wyatt and Mr. Mackell from envious and wicked motives, and that such a man ought to be employed by none, but detested by all." Another gentleman, one of my customers, observed to me, that he was sorry to see my name in the public papers as *found guilty* of a Libel against Mr. Wyatt; and when I told him I had been ACQUIT-

TED. he seemed surprized that such an advertisement should have been published, and intimated his apprehensions of the injury I was likely to suffer from it.

My Lords, the injury has operated far and wide; and the mischievous consequences that have arisen, and are likely to arise, to me and to my family, from the misrepresentation I complain of, are almost incalculable; and feeling myself most seriously injured by this conduct, I am under an indispensable obligation to make my Appeal to the Public. For twenty-six years, both as a man of business, and in private life, I have supported a fair and honest reputation, and it is of the utmost importance to me to preserve it.

I have therefore, my Lords, presumed thus to lay before your Lordships the reasons which oblige me to make my Appeal to the Public; and I persuade myself, that your Lordships will be of opinion, that this measure is not only justifiable, upon every principle of self-defence, but commendable also in regard to the Public. In doing this, I mean nothing vindictive to my opponents, or injurious to their characters, either professionally or morally. Exculpation of my own character and conduct is all I aim at.

Permit me, my Lords, to express the grateful sense I feel, and shall ever be conscious of, for your Lordships condescension and goodness, in coming forward, voluntarily, to support me on the day of my trial, the recollection of which will ever cause a glow of unfeigned gratitude in the heart of,

My Lords,

Your Lordships most obliged, obedient,

And very humble servant,

JOHN HANSON.

AN
APPEAL TO THE PUBLIC,

IN
 VINDICATION OF THE CONDUCT

OF
JOHN HANSON.

HAVING been indicted in the Court of King's Bench for a Libel on James Wyatt, Esq. Surveyor-General of His Majesty's Works, and Mr. John Mackell, of Park-lane, Smith to the Office of Works, and a partial account of my trial on such indictment having appeared in several of the public newspapers, in which the circumstance of MY ACQUITTAL is totally suppressed, and the whole so stated as to leave room for the inference that I was guilty of the offence imputed to me, namely, "of wantonly slandering those gentlemen in their respective professions," much injury has, in consequence, arisen to me in my business, and that to a more serious and extensive degree than will be readily conceived. To prevent its affecting me still farther, I feel myself of necessity driven to this Appeal, in justification of my character and conduct, professing my motive to be purely and simply that of SELF-VINDICATION, and a determined intention

"To set down nought in malice."

It is, therefore, solely with a view to counteract the imputation which such partial accounts of my trial

trial have actually produced, and to prevent its farther dissemination, that I now trouble the Public with the following statement of the facts which preceded and gave rise to the prosecution of which I was acquitted.

The Crown having granted Leases of certain parcels of ground in the Green-Park to the following Noblemen and Gentlemen, for gardens to their adjoining houses, namely,

Wm Morton Pitt, Esq.
 The Right Hon. Lord Romney,
 The Right Hon. Lord Eardley,
 The Right Hon. the Earl of Cork, (Landlord
 to the Marquis of Bath,)
 The Most Noble the Marquis of Salisbury,
 The Right Hon. Lord Dundas,
 Sir John Hort, Bart.
 The Right Hon. Lord Yarborough,
 The Right Hon. Lord Vernon,
 The Right Hon. Lord Gage,
 The Right Hon. the Earl of Moira,
 His Grace the Duke of St. Alban's,
 The Right Hon. Lord Malden,
 The Right Hon. Lord Carrington,
 The Right Hon. the Earl Spencer,
 His Grace the Duke of Bridgewater,
 Henry Errington, Esq. Landlord to Lord Gren-
 ville, and also for his own dwelling-house ;

Mr. John Mackell was employed to enclose the said grounds with Iron-railing. The work being completed, and a bill sent to each of the parties, some of the Noblemen were dissatisfied with Mr. Mackell's charges ; and I was desired by the Marquis of Salisbury and Lord Romney, two of my customers, to look over the bills delivered to them, and directed to say what I should have charged had I done

I done the business for them. I was, moreover, authorized by Lord Romney to settle his bill with Mr. Mackell, for which purpose I called upon him, and endeavoured to convince him he had erred in regard to the prices he had charged. In this attempt I was unsuccessful; and the difference between us being very great, I proposed his calling in another person, in order for an amicable settlement, without farther trouble. I am sorry to say his behaviour was not civil; he told me I was no Smith, and knew nothing of the business, with other coarse and intemperate language. I was therefore under the necessity of delivering to Lord Salisbury and Lord Romney my valuation of Mr. Mackell's work, which I accordingly did.

Several other Noblemen were also dissatisfied with Mr. Mackell's charges. In a word, Arbitrators were appointed, to examine and settle the bills, namely, Mr. Robert Jackson, Smith, of Frith-Street, on the part of the Noblemen and Gentlemen, and Mr. Alexander Brodie, Smith, of Carey-Street, on the part of Mr. Mackell; and, in case they should not agree, James Wyatt, Esq. Architect, was appointed the Umpire. The Arbitrators not agreeing, Mr. Wyatt, in consequence, undertook the business, and made an Award. This Award was unsatisfactory, and was, therefore, by desire of the noblemen, and with Mr. Mackell's consent, referred back to Mr. Wyatt to be reconsidered; and Mr. Moser was appointed on the part of the Noblemen, and Mr. Wapshott on the part of Mr. Mackell, to produce evidence before Mr. Wyatt. It was mutually agreed that Mr. Wyatt's second Award should be final; but it was upon this express and most reasonable condition, *that all the evidence should be examined.*

Upon

Upon this second Reference, I attended Mr. Wyatt on the part of Lord Salisbury and Lord Romney, in order to substantiate the objections I had made to the bills delivered to them. I was examined by Mr. Wyatt, upon OATH; and since my having ventured to give my opinion upon Mr. Mackell's charges, although at the express desire of the Noblemen who were my employers, has been attended with such a train of unpleasant consequences to myself, I will beg leave to assert that the terms I allowed to Mr. Mackell were more than I charge for such sort of work. At the time I was examined, Mr. Wyatt shewed me a drawing of several kinds of Smith's works, and asked what I charged for such sorts of work; he also asked Mr. Wapshott, who was present on the part of Mr. Mackell, the same question. My prices were so much lower, that Mr. Wyatt seemed surprised; and said, if this was true, the Office of Works had been imposed upon, for that his predecessor had allowed greater prices many years back. In order to convince Mr. Wyatt, I produced thirteen Drawings*, for work as near his own patterns as I could recollect, and which had been executed by me for dif-

* Engraved Copies of these thirteen Drawings are added at the end of this Appeal, together with Drawings of the Front and Side Railing for the Gardens in the Green-Park, and the Prices of each annexed.

It is remarkable that one of these Drawings, being the Gates, (No. 6. in Plate I.) is very nearly of the pattern of the Front Railing in the Green-Park, (Plate IV.) with this difference, however, that the Gates were of bars only five-eighths of an inch in thickness, which rendered them more expensive; yet the price of these Gates, running measure, came to 18s. per foot, whereas Mr. Mackell's charge for the Front Railing, made of common bars, was 1l. 5s. 4d. per foot, running measure, exclusive of brick, stone, paint, lead, and fixing, and besides an extra charge of two guineas upon each Gate above the price of 1l. 5s. 4d. per foot, running measure.

ferent

ferent Noblemen and Gentlemen. I referred to the places where the work might be seen, and offered the inspection of my books, to corroborate the testimony I had given; and I appealed to practical Smiths of great reputation, who, upon Oath, coincided with me entirely.

At the close of this business, I was reflected upon in a way that affected me most unpleasantly: It was insinuated that I had been impertinently forward in it; that I had been the Chief, or Captain, in this dispute; that the Noblemen would have been satisfied with the first Award had it not been for my officiousness, and the invidious representations which I had pressed upon their attention: in short, that I had used indirect means to injure Mr. Mackell. Stung by such insinuations, I printed the Statement of Facts, (on which I was afterwards indicted,) which was communicated by me to those persons only with whom my character had been, or was likely to be injured, and to whom it would have been impossible for me, in a *verbal* defence, to have stated the facts so minutely as was necessary. I considered, likewise, that statements consisting chiefly of figures and calculations might escape the most accurate memories; and I held it to be my right, as well as my duty to my family, to make my defence as permanent as the accusations against me had been general. My intention, however, was not to reflect upon Mr. Wyatt, or Mr. Mackell, but solely to justify the opinion and valuation of the work which I had given to Lord Salisbury and Lord Romney, even before the Arbitrators were concerned, and, consequently, to clear my character from aspersion. One word alone was found in that Statement on which to ground a criminal prosecution, and I have been *criminally* prosecuted.

In

In a case of Libel, the law offers two remedies, the one by indictment for a libel, and the other by a civil action. The former is at the King's suit, and has solely to do with a supposed offence against the public peace; the latter, with a compensation in damages to the party, for the injury done to him. In a prosecution by indictment, the Defendant is not allowed to allege the truth of the Libel in his justification; but in the other case, of an action for damages, he is. My Prosecutors chose to adopt the former of those remedies, although it is clear the latter would have been the most honourable one for themselves; for, as the noble Judge observed upon the trial, "*in that case evidence might have been given on both sides.*" By this conduct I have been subjected to a great deal of obloquy, expence, reproach, and injury in the way of my business.

In the course of the prosecution, every severity that could be devised was employed against me, and every means used to intimidate, and even to terrify me. The Court was moved, and a warrant was issued out against me: and I was liable to be confined forty-eight hours, till approved bail should be given for my appearance. I was threatened by Mr. D. Smith, of Great St. Helen's, my Prosecutor's Attorney, in the presence of Mr. Moser, with damages to the amount of several thousand pounds; with imprisonment in Newgate, or the King's Bench; nay, to finish the terrible catalogue, with the bitterest consequences through the remainder of my life; and I have been credibly informed that my Prosecutors intended, if they succeeded in convicting me of a Libel, to commence separate actions against me for damages. In a word, punishment to the uttermost was their determined object, and my sole offence that of having unguardedly

edly used an unfortunate expression, for which I have since apologized; unless my having differed with Mr. Wyatt and Mr. Mackell, on the value of a piece of the most common Smith's work, and given my opinion honestly to my employers, *in obedience to their commands*, followed by a statement of the facts on which that opinion was founded, and by which it is still supported beyond the possibility of refutation, can be construed into the motive of such prosecution.

Unable as I was to judge of the legal merits of the case, or the probable consequences of the indictment, I confess I was alarmed. Eventually, indeed, it appeared there was no just cause for it; but so desirous was I of accommodating the difference, that, contrary to the advice and opinion of my friends, I made an offer to pay all costs. This offer, however, was rejected. My Prosecutors, it seems, had higher claims. I must not only pay all costs, but, moreover, submit to be fined in such farther sum as should be determined by a Counsel, to whom they proposed to refer the ultimate decision of the business. This was the language they held, and these the claims they brought forward, and supported to the very eve of the trial. It must be clear I did all I ought to have done, and perhaps even more than could have been reasonably required, to prevent the trial taking place.

The trial, however, came on; and, during Mr. Erskine's address to the Jury, Lord Kenyon called for a copy of the Pamphlet; and, having looked through it, his Lordship said, "He saw nothing that appeared to him improper in the reading of it. It seemed to be a mere statement of facts upon which the Defendant had grounded his opinion in calculating the value of the work." His Lordship also asked, "What were the objectionable parts
of

of it?" I admit that on Mr. Erskine's pointing out to his Lordship the *two last* lines of the book, Lord Kenyon said, "those words were certainly improper." His Lordship however observed, "that a civil action seemed to be the proper remedy to which the parties in this case ought to have had recourse, and not a criminal prosecution, as in that case, evidence might have been given on both sides." His Lordship at the same time observed, that "he thought he perceived a disposition in the learned Counsel to fettle it."

At this moment a most surprising change took place in the sentiments of my Prosecutors, or of their advisers; and they who had before refused all offers of accommodation, were now content to accept a simple Explanation of my motives for printing the Statement of Facts, and a disavowal of any intention of imputing to Mr. Wyatt a *wilful* perversion of justice. I felt no difficulty in making that Explanation, nor should I have ever had any objection to make it, had it been proposed. It was accordingly penned by my Counsel, in the words following:—

"I published this Pamphlet *only* in vindication
 "of my own veracity and character. I had no in-
 "tention to defame either Mr. Mackell or Mr.
 "Wyatt; but differing in opinion with them, as to
 "the propriety of Mr. Mackell's charges, I stated,
 "in confirmation of my own opinion, the grounds
 "upon which I had formed it; and if the publi-
 "cation contains any thing which can convey an
 "opinion of Mr. Wyatt's wilfully perverting justice
 "in his Award, it is extremely wrong, contrary to
 "my intention, and I am very sorry for it.

"JOHN HANSON."

This

This Explanation being accepted, the Jury, under the direction of the noble Judge, pronounced me NOT GUILTY!

It must seem very marvellous, that, at one moment, my Prosecutors should not only demand all costs, but also an indefinite pecuniary fine; and a few hours after profess to be *highly* satisfied with a simple explanation of my intentions in publishing my statement, abandoning all their pecuniary claims, and even paying their own costs, *which I had offered to defray, and which were upwards of 300l.* as I have been given to understand. It will be asked, what did they gain by that Explanation, which could induce them, in a moment, to resign their lofty pretensions, and take their own costs upon themselves? Should any one, from hence, be disposed to infer that my Prosecutors felt, at this moment, that they had some how committed themselves, and perceived the ground on which they stood to shake under them, I have nothing to do with that. I will leave the Reader to draw his own conclusions from these facts, contenting myself, simply, with imputing this great conversion to the marked discountenance which the prosecution, in that shape, received from the noble and learned Judge.

The misrepresentations which followed, immediately after the trial, the pains employed to conceal and suppress the fact of my acquittal, and the injury I have sustained in consequence, and which forces me now to come before the Public, are stated in the Address prefixed to this Appeal, and to which the Reader is respectfully referred.

In order to prove that I have done nothing to merit the reproach which has been so unjustly cast upon me, I shall subjoin an Abstract of Mr. Mac-

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kell's original Charges to some of the Noblemen, as transmitted by him to Mr. Jackson, one of the Arbitrators; and the Deductions made by Mr. Wyatt's several Awards. This is by no means intended to prejudice either Mr. Wyatt or Mr. Mackell, but only as a document tending to the EXCULPATION OF MY CHARACTER.

In order to prove that I have done nothing to merit the reproach which has been so unjustly cast upon me, I shall subjoin an Abstract of Mr. Mackell's

Parties.

Parties.	Original Bills of Mr. Mackell.	First Award of Mr. Wyatt.	Second Award of Mr. Wyatt.	Deductions by Mr. Wyatt's First and Second Award.
Wm Morton Pitt, Esq.	£. s. d. 81 12 7	£. s. d. 77 12 0	£. s. d. 77 12 0	about 5 per cent.
Lord Romney	78 10 0	74 3 3	65 19 9	about 16 per cent.
Lord Eardley	146 10 4	146 10 4	141 16 4	about 3½ per cent.
Marquis of Bath	94 4 2	94 4 2	94 4 2	—
Marquis of Salisbury	80 3 3	80 3 3	71 19 4	about 11 per cent.
Lord Dundas	125 8 9	117 6 2	112 6 2	about 11 per cent.
Sir John Hort, Bart.	78 12 10	75 14 0	70 4 0	about 11 per cent.
Lord Yarborough	87 11 10	82 3 8	79 5 8	about 9 per cent.
Lord Gage	119 10 6	115 17 9	109 7 9	about 8 per cent.
Lord Vernon	165 11 10	161 18 3	158 9 2	about 4 per cent.
Lord Moira	282 19 3	281 12 5	281 12 5	about 1 per cent.
Duke of St. Alban's	196 2 4	188 12 10	184 12 10	about 11 per cent.
Lord Malden	157 17 11	151 8 10	142 12 10	about 9 per cent.
Lord Carrington	79 7 6	75 17 5	66 6 5	about 15 per cent.
Lord Spencer	366 19 9	354 1 5	349 7 5	about 4½ per cent.
Lord Grenville	209 13 2	209 13 2	209 13 2	—
Henry Errington, Esq.	77 0 7	75 19 11	74 8 11	about 3½ per cent.
	2427 16 7	2362 18 10	2289 18 4	

It appears from this Abstract that Mr. Wyatt, by his first Award, deducted from the gross amount of Mr. Mackell's Bills near 2¹/₂ per cent. the whole amount being 2427l. 16s. 7d. (which sum included all Mr. Mackell's extras for gates, locks, alterations, &c.) and that by his second Award, a farther deduction was made of above 2¹/₂ per cent. more. It is evident that Mr. Wyatt, by making those deductions, admitted and confirmed, to a certain extent, my opinion on Mr. Mackell's charges. But it is by no means incumbent on me to account for Mr. Wyatt's conduct in this transaction. I can assign no reason why he altered his first Award, *if it was right*; and if an examination of some of Mr. Moser's witnesses tended to rectify his judgement, and enabled him to amend his Award, I cannot say what might have been the effect if all the witnesses produced by Mr. Moser had been examined, especially as the principal witness was not heard, which Mr. Moser himself signified by letters to the Noblemen.

I mean not to intimate by this, that Mr. Wyatt had no documents on the part of the Noblemen to guide his decision; for he had many. He had Mr. Jackson's valuation and calculations of the prime cost, letters of opinion of respectable Master-Smiths, who coincided with Mr. Jackson, and the oaths of experienced workmen, as to the labour and materials used in making the pattern pieces of the same work. What I state is, that Mr. Wyatt did not examine Mr. Jackson in the first instance, nor all the witnesses Mr. Moser had to produce in the second, which was of the most material consequence.

Neither is it my province to explain why a deduction was made on some of the bills, and not on all. Several of the Noblemen, when the above
Statement

Statement was presented to them, exclaimed, Whence is it that the deductions are so unequally divided? How is it that, in one instance, there is an abatement of 11 *per cent.* and in some none at all? Such questions I feel myself wholly incompetent to answer, since, apparently, there is the same reason for deduction in each case, as there is in any one; for the work was of the same nature, and the charges the same. It might be asked, How is it that the Marquis of Salisbury is not mentioned in the first Award, although in the second he has 11 *per cent.* deducted? And why Lord Eardley is not mentioned in the first Award, although by the second 3½ *per cent.* is abated? It should appear from Mr. Mackell's transmitting to Mr. Jackson the account of all the Noblemen's bills, that every one was meant to be examined in the first instance, although every Nobleman did not sign his assent to the arbitration. It might be farther asked, What is the reason that Lord Grenville's name is mentioned in the preamble of both Awards, but no mention made of his bill in either? In the cases of the Earl Spencer and Earl of Moira, the two largest bills, and the work nearly similar, Lord Moira has only 1 *per cent.* deducted from his bill of 282l. 19s. while Lord Spencer, whose bill 366l. 19s. has upwards of 4 *per cent.* deducted. (See the preceding statements.) The Marquis of Bath is not mentioned in either of the Awards. It is true his Lordship's bill had been paid, but so had also Mr. Pitt's; and yet 4l. was returned to Mr. Pitt by the first Award, but nothing to the Marquis of Bath in either of them.

In Mr. Mackell's original bills, 1266 feet of front railing was charged at 1l. 8s. 6d. per foot, and 706 feet of side railing at 16s. 6d. per foot, amounting to the sum of 2386l. 10s. This included

stone-work, brick-work, lead, fixing, and painting; *which, according to separate accounts transmitted by Mr. Mackell to Mr. Jackson, was near 3s. 2d. per foot, the whole amount being nearly 312l. This sum being deducted, the bill for front and side railing alone was 2074l. 10s. Mr. Jackson first ascertained the weight of the railing, as fixed, in order to regulate his valuation either by weight or measure. This was done by taking up several lengths of Mr. Mackell's work, and weighing them, and then carefully measuring the whole of the work. Mr. Jackson likewise ascertained the prime cost of the workmanship, by the testimony of experienced workmen, who made four different lengths of the same pattern, upon oath; and, in order to do away the objection that those men might work harder on this occasion than they did in common, or would continue to do throughout so large a job, the men offered to make any quantity at the same price, and declared, they should be benefited by it 8s. per week in addition to their customary wages; and, as a farther proof that they were quite right in their calculations, Mr. Tucker, a Master-Smith, who made the front railing for Lord Carrington's garden, exactly of the same pattern as the rest, corroborated this testimony upon Oath.*

By Mr. Jackson's calculations of the prime cost of the railing, in which he allowed Mr. Mackell the very liberal profit of 10 per cent. on all the materials, he ascertained the real value thereof to be 14s. 6d. per foot for the front railing, and 6s. 4d. per foot for the side railing; at which rates the amount of the prime cost was as follows:

1266 feet

	£	s.	d.	£	s.	d.
1266 feet of front railing at 14s. 6d. per foot	917	17	0	1141	8	4
706 feet of side railing at 6s. 4s. per foot	223	11	4			

To this is to be added the sum of 37l. for loss sustained by Mr. Mackell in materials and labour, as stated by himself to Mr. Jackson, occasioned by preparing several hundred bars for constructing the fence on the plan first proposed, but which was afterwards altered

£ 1178 8 4

Mr. Jackson agreed to allow Mr. Mackell either 6d. per lb. or 20s. per foot, for the front railing, and 8d. per lb. or 10s. per foot, for the side railing, which, if taken by measure, would be thus :

	£	s.	d.	£	s.	d.
1266 feet of front railing at 20s. per foot	1266	0	0	1619	0	0
706 feet of side railing at 10s. per foot	353	0	0			

Therefore, according to this calculation, there was a clear profit allowed to Mr. Mackell of 440l. 11s. 8d.

Mr. Wyatt, who deducted rather more than 5l. per cent. upon the average from the whole amount of Mr. Mackell's bills, awarded for the railing only, exclusive of brick, stone, &c. 1936l. 11s. 9d. which, supposing the calculations of the prime cost, as above, to be correct, (and which a number of respectable Master-Smiths are still ready to prove), left Mr. Mackell an apparent clear profit

of 758. 8s. 5d. so that the difference between the two profits was 317l. 11s. 9d. and the rate of profit allowed by Mr. Jackson, according to the above calculation, was consequently about $37\frac{1}{2}$ per cent. and that allowed by Mr. Wyatt $64\frac{1}{2}$ per cent. upon the front and side railing alone.

I will here state a circumstance which, at the time I was called upon by the Noblemen to look over Mr. Mackell's bills, was entirely unknown to me; nor was it known to Mr. Jackson, or Mr. Moser, until after Mr. Wyatt had made his first Award. Though the Noblemen and Gentlemen to whom the gardens were granted were, doubtless, at liberty to employ their own workmen to construct the fences which were to be raised at their expence, Mr. Mackell, who had previously been employed by only a few of them, had the singular good fortune, or address, to prevail on them all, *one only excepted*, to employ him in such work. Lord Carrington alone resolved to employ his own Smith, and gave orders to Mr. Slark, a Furnishing Ironmonger in the City, to make the front railing for his part of the ground, and which is exactly of the same pattern as the rest of the work, and could hardly be distinguished from it. Mr. Slark did not make the railing himself, but employed a Working-Smith, Mr. Tucker, of Store-Street, to execute it. Each of them, of course, had a profit upon the work, and they were both well satisfied; yet the price charged to Lord Carrington was the very same I had allowed to Mr. Mackell for the front railing belonging to Lord Salisbury, namely, 6d. per lb. or 20s. per foot! Mr. Mackell would, consequently, in the price allowed, have had at least the two profits received in the other case by Mr. Slark and Mr. Tucker. I must add that Mr. Mackell made a charge of

two guineas extra on each gate and lock, but that, in Mr. Slark's bill to Lord Carrington, *the gate was included at the same price as the rest of the work*: and I can prove that a tradesman of no mean repute gave an estimate to Mr. Errington, one of the Gentlemen concerned, at a price considerably lower than I had allowed Mr. Mackell in my valuation.

I have stated the above facts merely to shew that the valuation I had given to the Noblemen, before the Arbitrators were concerned, was very near Mr. Jackson's, and similar to Mr. Slark's, although it is evident that I could then have no knowledge of either; and that my calculations of the prime cost were also proved to be right, from the pattern pieces made for a comparison of Mr. Mackell's work, upon the oaths of experienced workmen.

My sole object in printing this, as well as my former Statement of Facts, was and is to justify my own conduct, in the valuation of the work done by Mr. Mackell *for the Noblemen by whom I was employed*, and to shew, that in allowing him upwards of 30 *per cent.* profit upon so large a bill, I considered myself as acting with great liberality towards him. I meant no reflection upon Mr. Wyatt for allowing Mr. Mackell an apparent clear profit of between 60 and 70 *per cent.* He might think this quite right, and Mr. Mackell might not be satisfied with less. He has undoubtedly a right to fix his own rates of profit. All that I wish to prove is, that I was founded in my objection to his charges, and warranted in the prices which I had considered to be reasonable, by the *general* practice of the trade, and the rates of profit usually allowed, and which *I, in common with many others* in the same line, had been content to accept, upon works of a similar nature.

I must

I must now beg leave to notice a circumstance which has been grossly misrepresented, to the injury of my character. It has been said that I have circumvented Mr. Mackell, by taking a piece of the King's business out of his hands, upon terms considerably to my own loss. If such an imputation could, with truth, lie against me, instead of attempting to justify my conduct before the Public, I would retire from Society.

The work referred to is the large Iron Gates in the Green-Park, at the New Lodge near Hyde-Park Corner. A Drawing for those Gates was sent to me by John Soane, Esq. Architect *, with directions to deliver an estimate of the weight of the iron, and the sum for which I would execute the work. I PROTEST, BEFORE GOD, THAT WHEN THE DRAWING WAS PRESENTED TO ME, I KNEW NOT WHERE THE GATES WERE TO BE PLACED, NOR FOR WHOM THEY WERE TO BE MADE, OR THAT ANY COMPETITION WHATSOEVER WAS INTENDED; NOR HAD I THE LEAST IDEA THAT MR. MACKELL WAS IN ANY WAY CONCERNED. I appeal to Mr. Soane, with whom I had no previous acquaintance, for the truth of this assertion, which indeed has often been repeated by himself. It is probable that he might think it right to conceal those circumstances from me, until he had obtained my estimate, lest it might be influenced by the recent differences between Mr. Mackell and me. *In fact, I had supposed that the Gates were intended for the Marquis of Abercorn, for whom Mr. Soane had then considerable works in hand.*

In the two estimates that were delivered, Mr. Mackell and I nearly agreed in the quantity of

* An engraved copy of the Plan of these Gates is subjoined to this Appeal.

iron the work would require. My estimate was 63 cwt. and his 67 cwt. the difference being only four cwt. the proportional value of which is 15l. The weight and prices per pound of each estimate were specified upon the Drawings, which each of us signed. The amount of my estimate was 242l. 18s. and that of Mr. Mackell 356l. difference 113l. 2s. *Mr. Mackell's charge being nearly one-half more than mine.*

The estimates were laid by Mr. Soane before the Lords of the Treasury, and, with their approbation, I was directed to execute the order; and I may justly challenge a comparison of the workmanship with any similar work in the environs of the metropolis. An alteration afterwards took place in the plan of the Gates, by which an extra quantity of upwards of 21 cwt. of iron, beyond what was specified in my estimate, and 17 cwt. beyond Mr. Mackell's estimate, was used in the construction: but so far am I from being a loser by the business, that, when I am paid, as I doubtless shall be, and as Mr. Mackell, or any other Smith would be, for that extra weight of iron, my profit will be upwards of 20 per cent.

It pains me to bring forward to the Public eye such statements as these; but the attack which has been made on my character forces me to it. I was served with notice, upon my trial, to produce papers relative to this particular business, and I was fully prepared so to do. My Foreman, who has lived with me near twenty years, and who is still in my service, executed the work, and kept accurate accounts of all the labour and materials, which were signed every night during the execution of the work; and these very accounts would have demonstrated the profit I gained from it.

When I was examined as a Witness before Mr. Wyatt, my testimony was treated lightly, *because I was not able to make Smith's work with my own hands.* Mr. Wyatt seems not to have been aware that, if there was any force in that objection, it applied more strongly to himself than even to me. If no one is qualified to judge of the value of Smith's work but an actual working Smith, whence does an Architect derive his qualification for the province of an umpire in a business of this nature? Mr. Wyatt, surely, does not pretend to *the refined accomplishment of making Smith's work with his own hands.* I have at least to allege in favour of my own competency to judge of such matters, that I have employed upwards of twenty men in the Smith's business for twenty years past; and that my attention has been principally confined to that branch. However this may be, a number of respectable Master-Smiths have entirely coincided with me, both as to the value and calculation of the prime cost of the work in question; and this has been strengthened by the testimony of experienced workmen, founded on specific and *repeated* trials, and confirmed by Oath.

The preceding Narrative contains a correct statement of this business. Whether so great a profit as near 65 per cent. upon a bill of this large amount, where there was no risk, nor any long credit required, was or was not too much, is no part of my enquiry. My purpose is wholly answered, if it has been proved that my conduct has been liberal and candid towards Mr. Mackell, and upright towards my employers; and, of consequence, that I have merited no part of the odium that has been cast upon me.

I have stated incontrovertible facts, and I have vouchers and documents for every thing I have advanced,

vanced. Had not a stigma been thrown upon me by a criminal prosecution, and the fact of my acquittal been attempted to be suppressed, in the partial accounts of the trial propagated in the newspapers, I would not have troubled the Public with this Appeal: but I considered it indispensably necessary for the defence of my character, which is dearer to me than my life; for without character, what can be a consolation, or who a friend? and well has it been said,

“ Poor is the FRIENDLESS Master of a World.”

JOHN HANSON,

Smith and Furnishing Ironmonger
TO THE KING.

BRUTON-STREET,
Nov, 1798.

***The

* * The following Plates, contain copies of the thirteen Drawings produced by me to Mr. Wyatt, and referred to in page 172. Also copies of the Drawings of the Iron Railing made by Mr. Mackell for the Gardens in the Green-Park; and of the Plan of the large Iron Gates executed by me for HIS MAJESTY at the entrance of the Green-Park, near Hyde-Park Corner; and the prices for which each was executed.

As Mr. Wyatt first thought fit to bring forward a number of Drawings, and to ask my prices for works of different kinds, the first thirteen Drawings here given were produced by me merely to convince Mr. Wyatt that my objections to Mr. Mackell's charges were not founded in caprice or ill humour, but that the prices I was willing to allow him, on the part of Lord Salisbury and Lord Romney, were fully equal to those which I had been in the habit of charging to my own customers. They are here respectfully submitted to the Public, to form their own judgement on the whole.

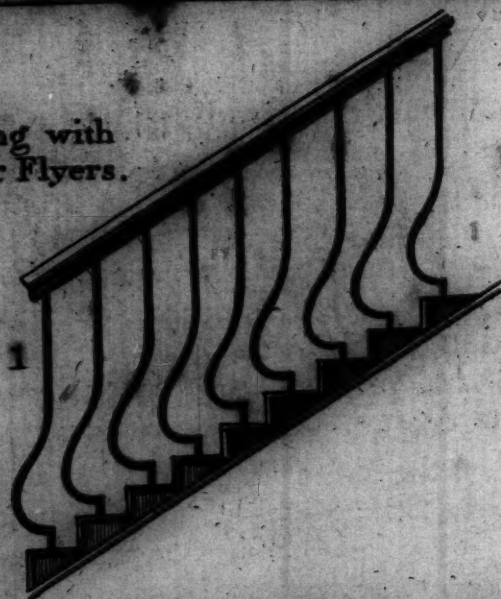
ERRATA

- Page 13, Line 17, *for In read in.*
 43, — 10 from bottom, *for sworn read examined.*
 61, — 5 from bottom, *for iron read old iron.*
 73, — 7, *read Mr. Marryat.*
 78, — 1, *for have read had.*
 122, — 1, *dele sworn.*
 128, — 9, *for It read I.*

T. Burton, Printer,
 Little Queen-Street.

Ex A. G. P.
 1/17/06

Stair Case Railing with
Pencil Bars & Flyers.



Executed for the Marquis of Salisbury in Oct. 1787. at 6.^d p. lb.
exclusive of fixing.
Same pattern made for Lord Thurlow under the Direction of Henry
Holland Esq. in Oct. 1788. at 6.^d p. lb.

Plain Kneed Stair Case
Railing with Flyers.



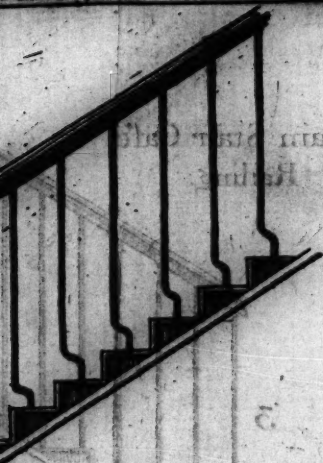
Executed for Gov. Hornby, in Nov.
Same pattern made for Lord Romney



Strong Area Step Railing at 5.^d p. lb.



Wrought Iron Railing, made for M. Smith, (at
p. Cwt. / not quite 3.^d 2/4 p. lb.) & paid for Work for
the ordinary full profit of the trade.
Same pattern Railing, but Cast Bars, & wrought
for M. Wright, Store Street, at 28.^d p. Cwt. / 3.^d p. lb.



Plain Stair Case
Railing.



Nov. 1787. at 5^d 1/2 p. lb.

Romney, in May 1797. at 6^d p. lb.

Made for Rob.^t Brettingham Esq. Architect, in Oct. 1796.

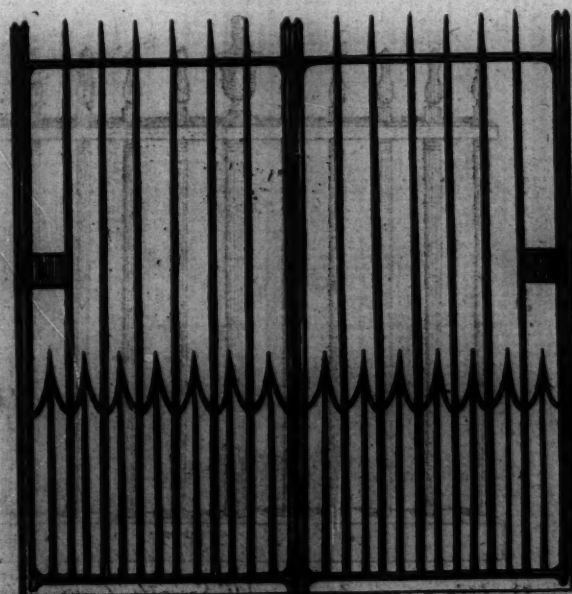
& again in March 1797. at 6^d p. lb.



Smith, Carpenter, Vine Street, for 34^t
Work for Work, each party charging

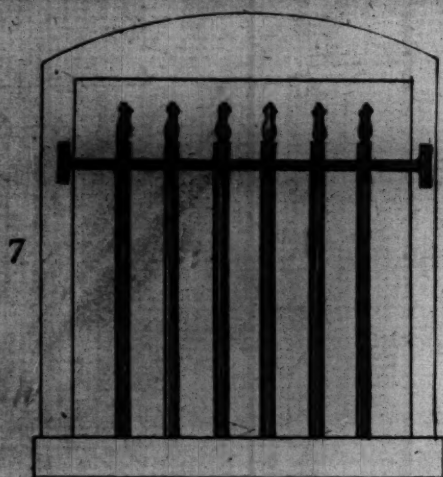
brought top Rail & Standards, made
(3^d p. lb.) work for work.

6

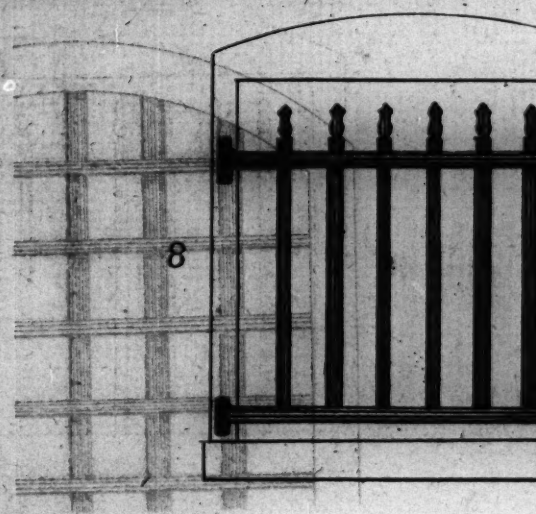


See note.
page 13.

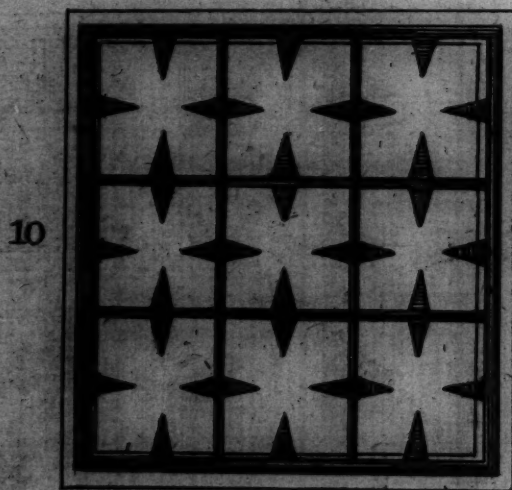
Framed Iron Gate 5 ft. 4 In. high & 3 ft. wide, the Bars 4/8th of an Inch
thick. These Gates, were made for M. Wright, Store Street, & fix-
ed at Camden Town, weight of the two only 1^c 2^d 16^d charged 7^d
p. lb. (& paid. Work for Work.) being not quite 18^d p. foot. run.



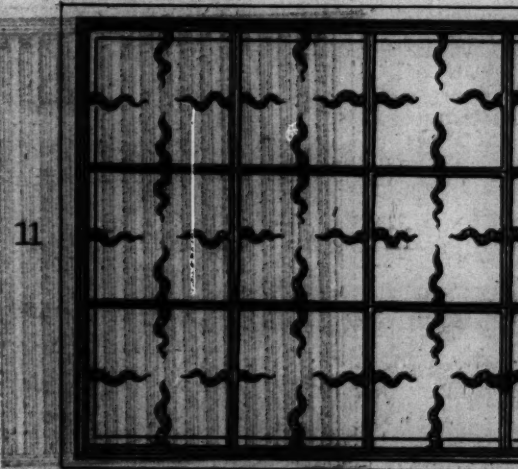
*Plain Window Guards, made for M^r. Smith, Carpenter,
at 4^d p. lb. & paid for Work, for Work, (as before)*



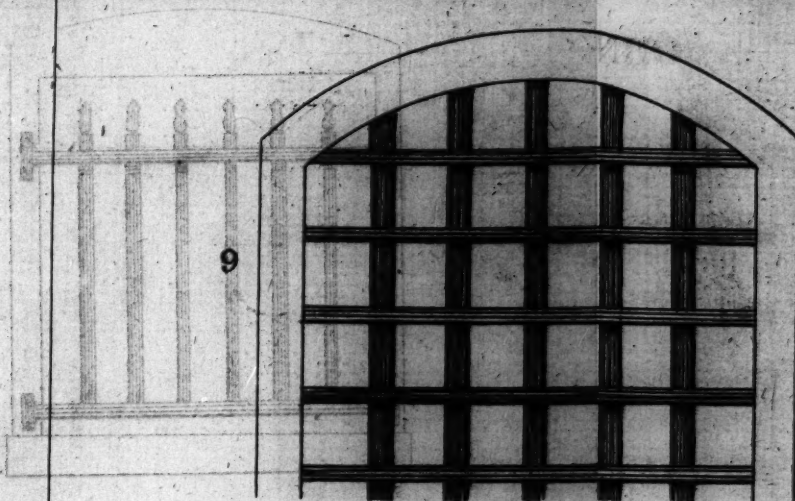
Framed Window Guards made for Gov^r. L



These Window Guards, charged at 7^d p. lb.

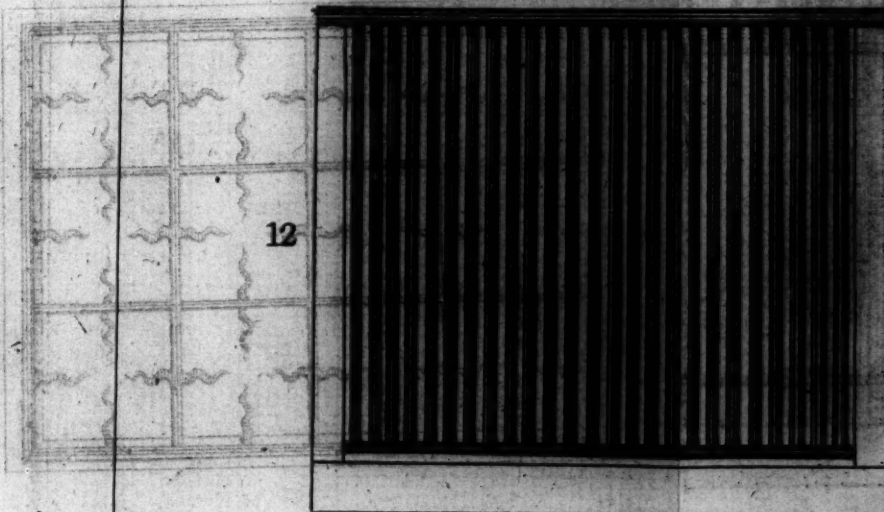
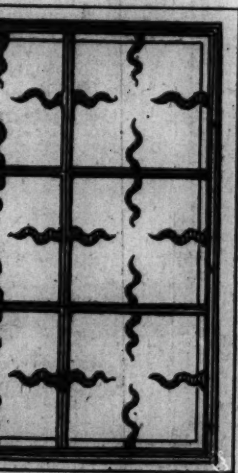


*These Window Guards, charged according to
from 3 Guineas upwards*



Gov^r Hornby at 4^d 1/2 p. lb.

Strong Framed Iron Work, made for Northampton Jail. at 4^d 1/2 p. lb.



according to the Size.

Framed Work for Areas. made for M^r Wright, in August 1796.

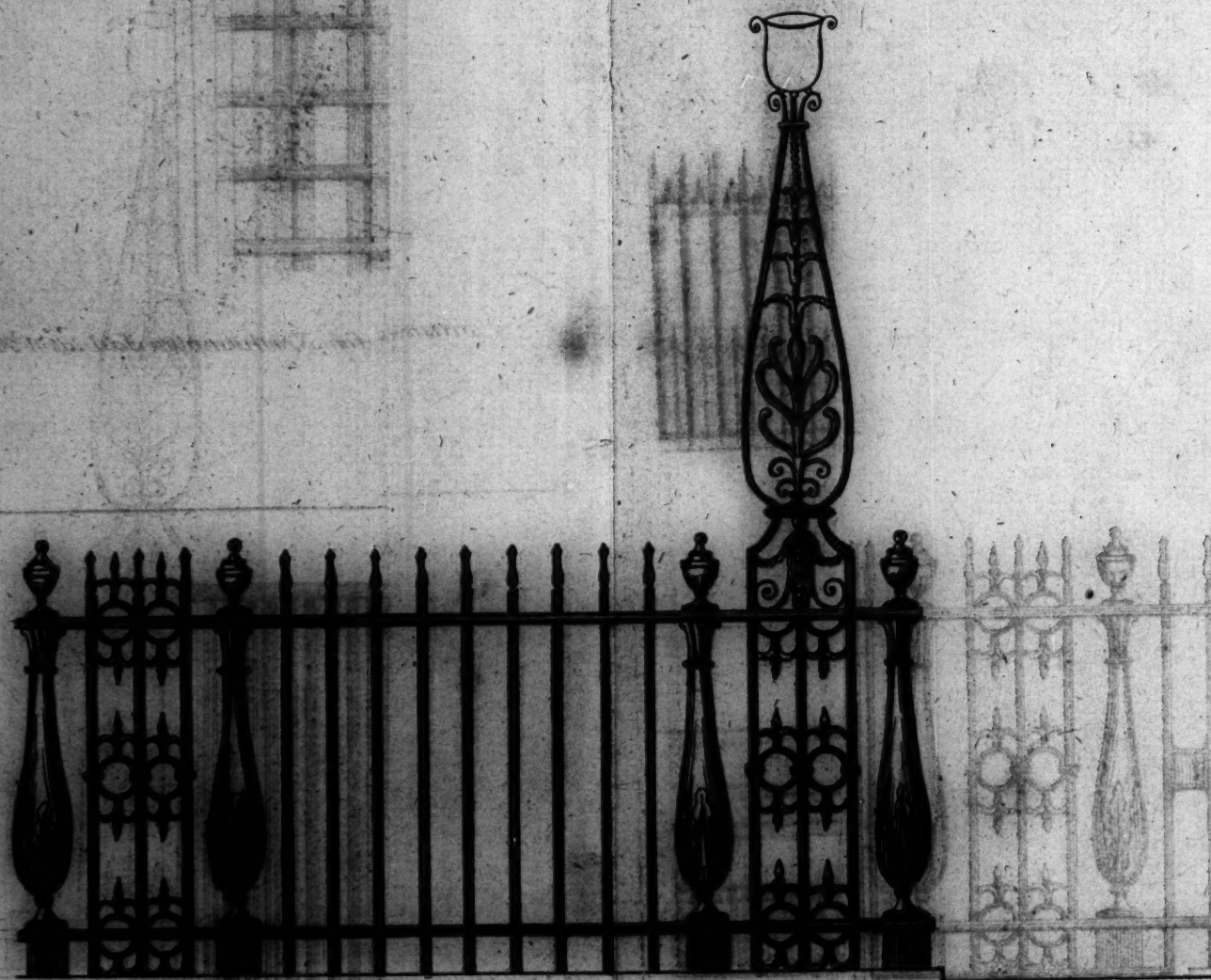
upwards.

at 6^d p. lb. & paid Work for Work.

ORNAMENTED RAILING, made for GOV.^R HORN

executed by JOHN HANSON

13



The Bars of the plain wrought Iron framed Railing full 1 inch Thick, top & bottom

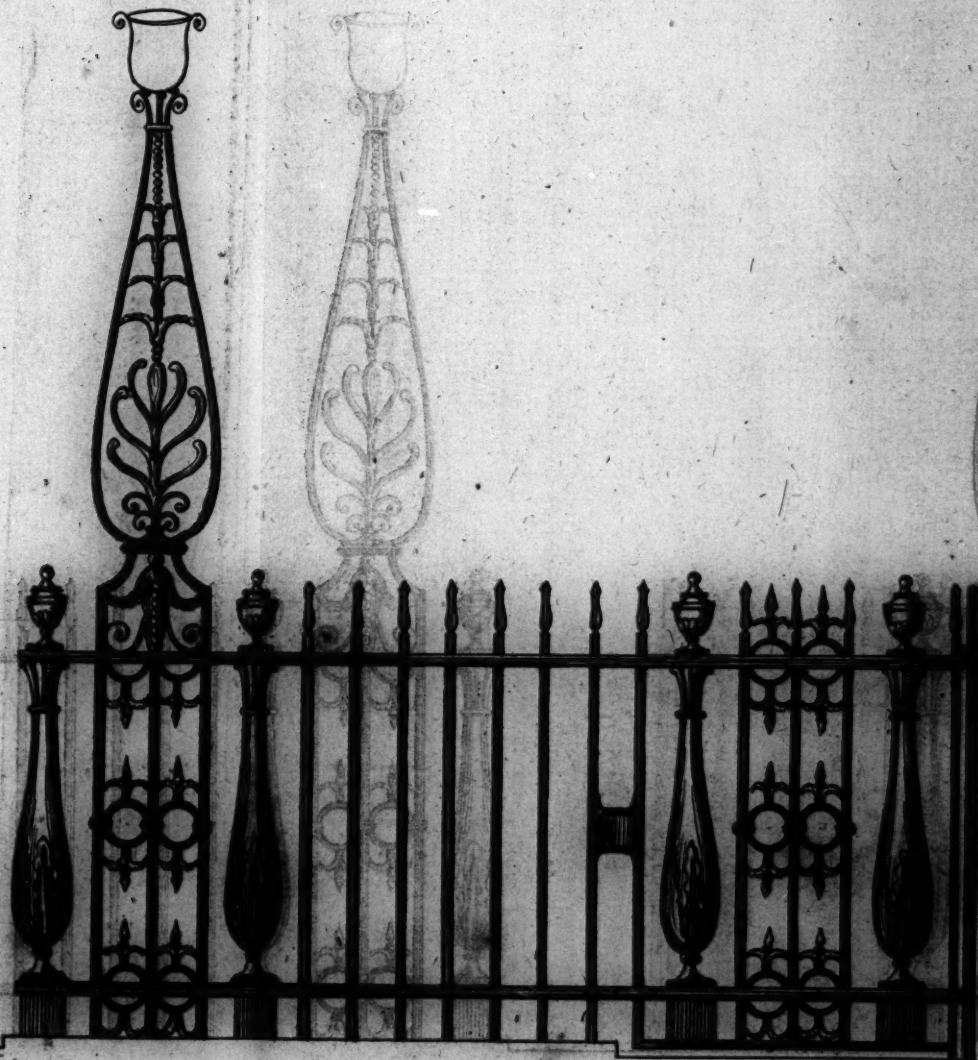
The charge for the whole including the Pair of Lamp Irons & ornamental Gate

Lamp Irons 8^d p. lb. Framed Iron Gate 7^d

Longmate 70.

ORNBYS HOUSE, in PORTMAN SQUARE.

ANSON, Bruton Street.



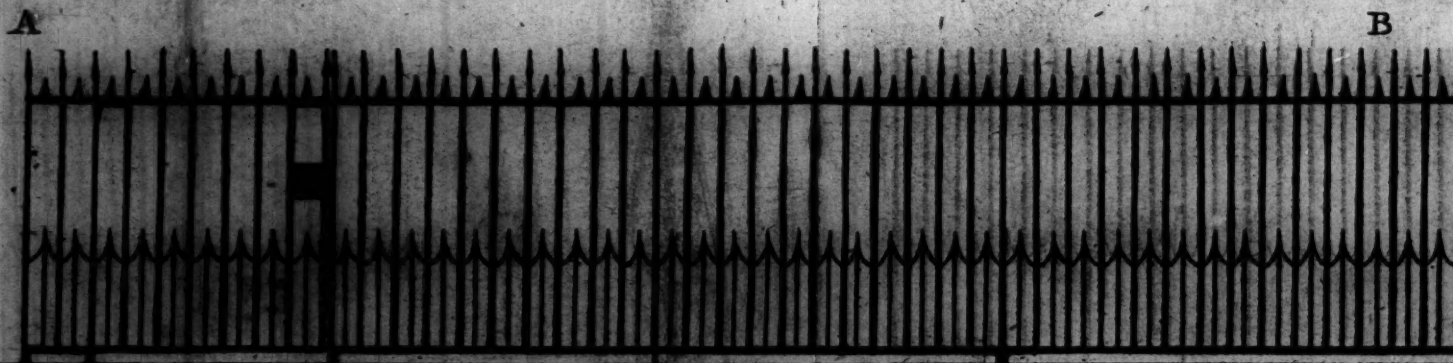
Bottom Rails 3 inches by $\frac{3}{4}$ full, Wrought Iron Pilasters with Cast Standards.

Gate, as follows Plain Railing 4.²p.lb. ornamented Pilaster 5.⁴ $\frac{1}{2}$ p.lb.

te 7.²p.lb. exclusive of fixing.

PATTERNS of the FRONT & SIDE RAILING,

FRONT RAILING



SIDE RAILING, OR DI



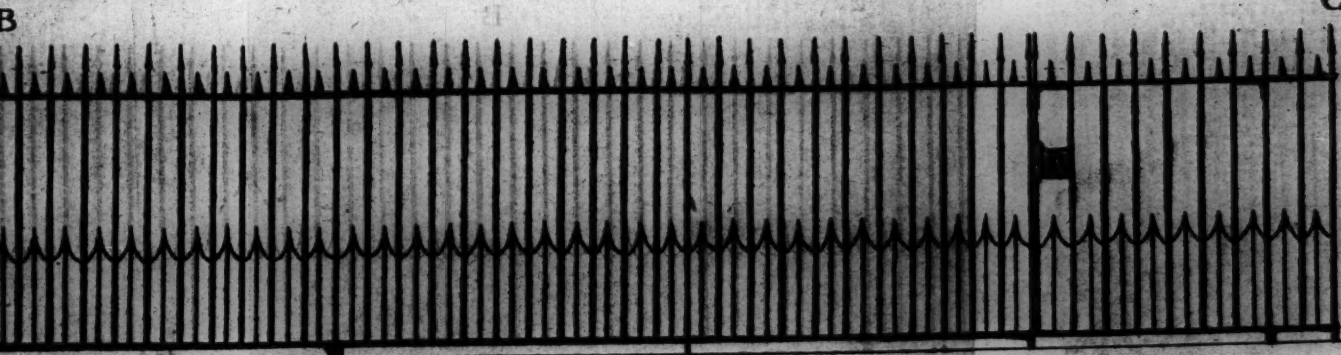
Price allowed by M^{rs} Jackson & Moser Eight-pence p.lb. or Ten Shillings p. foot. — Price charged

A to B. Part of Lord Malden's Front Railing made by M. Muckell charge 7^d & 1/2 p.lb. besides

B to C Part of Lord Carrington's d^o put up by M. Slark, at 6^d p.lb. Gate included, with L

NG, of the GARDENS, in the GREEN PARK.

RAILING.



R DIVISION FENCE



charged by Mr. Mackell, to the Noblemen, Ten-pence p. lb. or Thirteen Shillings & Four-pence p. foot.

besides 2 Guineas extra for the Gate & lock & extra for Lead & fixing.

with Lead & fixing, & made for him by Mr. Tucker, a Working Smith, at 5.^d p. lb.

D[®]
arch
ations

GATES made for HIS MAJESTY, by JOHN HANSON, un

at the Entrance of the GREEN

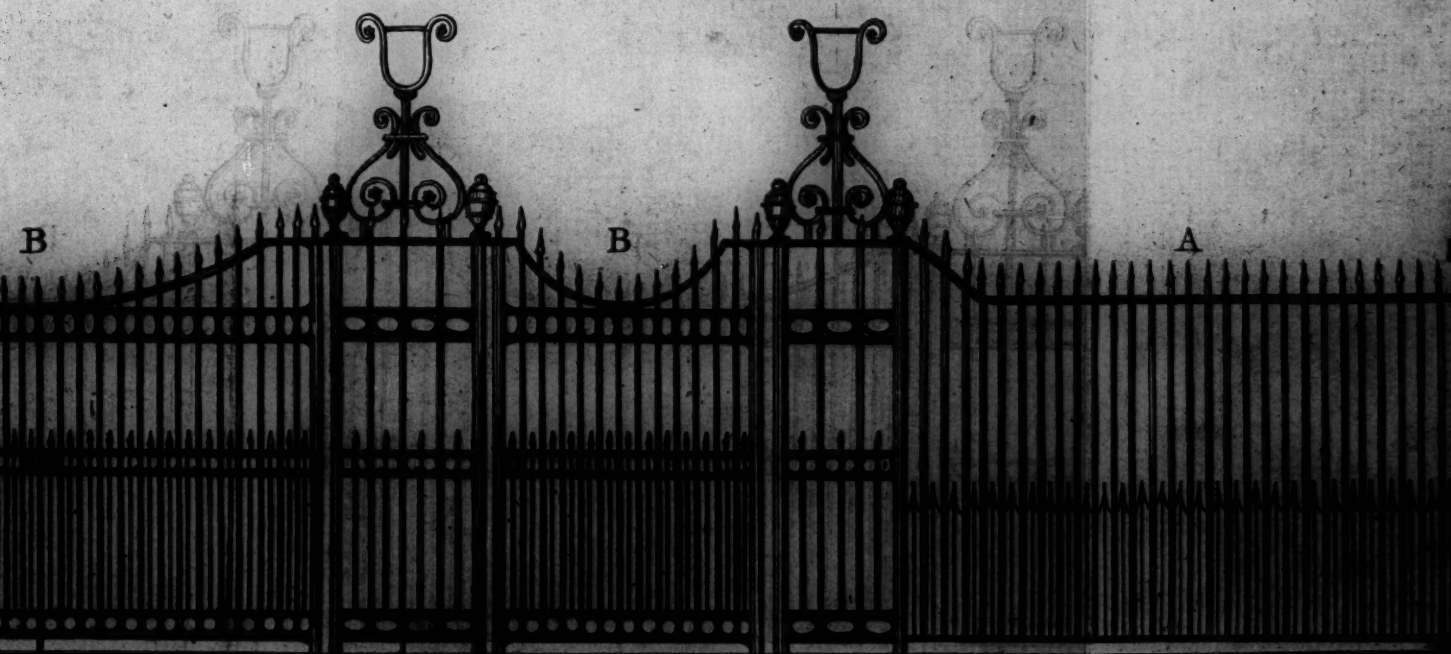


A.A. *The two Ends*.....

B.B.B. *The Center, comprizing the Carriage
& Foot Gates, & Pilasters.* }

N, under the Direction of JOHN SOANE Esq. ARCHITECT.

EN PARK in PICCADILLY.



Price by M. Mackells

Estimate.

6^d. p. lb.

13^d. p. lb.

Price charged by

John Hanson.

6^d. p. lb.

8^d. p. lb.